

# e-Competitions

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## The Moroccan Competition Authority publishes its first annual report since the adoption of the Moroccan competition law in 2014

**INVESTIGATIONS / INQUIRIES, PRICES, ALL BUSINESS SECTORS, THRESHOLDS, MERGER (NOTION), REFORM, EFFECT ON COMPETITION, MOROCCO, GENERAL ANTITRUST**

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**Michel Ponsard** | UGGC (Paris)

**Emilie Buhé** | UGGC (Paris)

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The Moroccan Competition Council has published, during the summer of 2020, its first annual report since the adoption of the new Moroccan competition law in 2014 and the reactivation of the Competition Council at the end of 2018.

Indeed, as stated in a previous article published in the *Concurrences* journal N°2-2020, a new set of laws relating to competition law was adopted in 2014 (Law No. 20-13 of June 30, 2014 (Dahir No. 1-14-117) relating to the Competition Council (and its implementing decree No. 2-15-109 of June 4, 2015) and Law No. 104-12 of June 30, 2014 (Dahir No. 1-14-116) relating to freedom of pricing and competition (and its implementing decree No. 2-14-652 of December 1, 2014). The Competition Council was, for its part, reactivated at the end of 2018 with the appointment of its new members.

This annual report is therefore of special importance since it gives a first overview of the decision-making practice of the new Competition Council (it being precised that the competition law decision-making practice had not been published since the adoption of the new Moroccan competition law in 2014) and of its interpretation of certain aspects of the new competition law.

As indicated in its annual report for 2019, the Competition Council has, in 2019, issued 106 decisions and opinions including, (i) 53 decisions related to its attribution in merger control regulations (listed in a document entitled « Economic concentration decisions for the year 2019 »), (ii) 50 decisions relating to contentious referrals, and (iii) three advisory opinions.

**(i) With respect to the decisions rendered in merger control**, which the Competition Council indicates it considers to be of prime importance, the annual report and the document entitled « Economic concentration decisions for the year 2019 » specify that :

- 81% of the notifications, i.e. 43 of the 53 decisions rendered in 2019, were authorized without commitments, in phase I, within a period not exceeding the legal deadline of 60 days;
- 1 decision to move into phase II (advanced phase) has been taken (decision of the Competition Council No. 69/D/19 of 21 kaada 1440 (July 24, 2019) on the acquisition by 'Uber Technologies, Inc' of all the assets of 'Careem Inc');
- 9 transactions were considered « non-notifiable » in that they did not constitute concentrations within the meaning of the Moroccan competition law (see in particular the decision of the Competition Council No. 01/D/19 of 23 Joumada I 1440 (January 30, 2019) relating to the merger of the company 'Al Omrane Meknes' into the Moroccan Competition Authority) relating to a simple internal restructuring or the decision of the Competition Council No. 61/D/19 of 6 Chaoual 1440 (June 19, 2019) concerning the joint control of the 'Indigo' group by the companies 'Predica - Prévoyance Dialogue du Crédit Agricole' and 'Mirova' where it was noted that there was a total absence of effects on the Moroccan market).

Regarding more specifically the latter type of decision (no effect on the Moroccan market), the annual report stresses that, unlike other competition authorities, particularly European, the worldwide and national notification thresholds in Morocco are alternative and not cumulative.

This has implied the controllability of a very large number of transactions in Morocco, which has created a significant additional burden for the Competition Council and the operators concerned (for example, of the 53 merger control decisions rendered, only 26 transactions exceeded the national turnover threshold).

For this reason, in order to refocus on transactions impacting only the Moroccan market, the Competition Council decided, based on the provisions of Articles 1 and 11 of law 104.12, that only international concentrations having an impact on the Moroccan market concerned by the transaction (horizontal, vertical or conglomerate effects), should be subject to the notification requirement, whether or not the parties in question have a physical presence in Morocco.

**(ii) With regard to contentious decisions**, the annual report recalls that in 2019 no decision on the merits was taken by the Competition Council. Thus, of the 50 decisions rendered by the Council, 45 were decisions of inadmissibility, two were decisions of dismissal and three were decisions of withdrawal.

Nevertheless, the annual report emphasizes that the Competition Council has triggered in 2019 an official procedure for anti-competitive practices in the liquid fuels market, following a referral from professional and trade union organizations. This case, which was investigated in 2019, should be the subject of a future decision.

**(iii) Finally, the annual report describes the three advisory opinions issued by the French Competition Council**, which were on :

- the reintroduction of the price of diesel and super in the list of products, whose prices are regulated, within

the framework of the project to cap the profit margins of oil companies;

- a draft decree relating to the fixing of notaries' fees and the modalities of their collection;
- the draft law supplementing and amending Article 78-2 of law 15.95 forming the Commercial Code, as amended and supplemented to enact specific provisions relating to payment deadlines.

Without going back over each of these opinions, it should be noted that in the context of the first opinion relating to the fuel sector, the Council considered that the Government's project of capping the profit margins of oil companies, did not meet the legal conditions set out in Article 4 of Law 104.12, and was in any event unwise from the point of view of protecting the purchasing power of citizens and vulnerable segments of the sector. In any event, the Council considered that this project was not likely to respond to the structural malfunctions that the liquid fuel market has been experiencing since its not prepared liberalization in December 2015 and made a number of strong recommendations aimed at alleviating these competitive concerns.

The Council also recalled that on the occasion of the referrals received, it initiated sector studies to assess the state of competition in the following sectors, which it considers strategic : (i) the pharmaceutical industry, (ii) electronic commerce, (iii) private clinics, and (iv) wholesale markets for fruits, vegetables, red meat and fish.

Finally, the Competition Council presented its action plan for year 2020, which includes the following objectives:

- deepen its knowledge of the state of competition in Morocco and the world (analysis of international best practices) ;
- contribute to the establishment of procedures for preparing hearings, standardization of opinions, decisions and self-referrals;
- examine new markets such as the digital economy, energy, the liberal professions, real estate and banking;
- systematize data verification ;
- strengthen the skills and engineering of the investigation services; this objective is aimed in particular at enabling the investigation services to identify new anti-competitive practices.

The future 2020 annual report should therefore also be rich in interesting information.