

DOMINANCE

Morocco



Dominance

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Quick reference guide enabling side-by-side comparison of local insights, including into the general legal framework and sector-specific rules, the definition of collective dominance, and relevance of dominant purchasers; abuse of dominance and related defences; specific forms of abuse, enforcement, sanctions, remedies and appeals; and current trends.

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GENERAL FRAMEWORK

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 and its Enforcement Decree No. 2-00-854. 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.

A new set of laws relating to competition and dominance were adopted in 2014:

- 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).

Under Law No. 20-13 and the Law, the Competition Council has decision-making power over abuse of dominance cases; however, Law No. 20-13 and the Law only took effect after the appointment of the new members of the Competition Council, which occurred in November and December 2018.

The Competition Council, therefore, issued its first annual report in its new role in 2020, but no decision on substance relating to abuse of dominance cases has been issued yet. Most of the opinions of the Competition Council mentioned in this chapter were released by the Competition Council under the former legal framework.

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 its object or may have as its effect the prevention, restriction or distortion of competition.

Law stated - 16 January 2022

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 market conditions and to behave independently to an appreciable extent from its competitors and consumers.

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.

For instance, in its Opinion A/3/21 issued in 2021, the Competition Council considered that the dominance of Lesieur Cristal was based not only on its high market share on the market for table oils but also on other competitive advantages, such as the fact that it belongs to one of the main global operators, it has diversified activities and it owns important brands and a large portfolio of products.

Law stated - 16 January 2022

Purpose of legislation

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

The 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 the competitiveness of Moroccan undertakings within the international context.

Under article 9 of the Law, the provisions of article 7 do not apply to practices whose perpetrators can prove that the practices 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. The practices may impose restrictions on competition only insofar as these are essential to achieve this aim.

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 of the Law by the administration after a favourable opinion from the Competition Council.

Law stated - 16 January 2022

Sector-specific dominance rules

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

Certain sectors are regulated by sectoral regulators that aim at helping the sectors reach their competitive maturity. Sectoral regulators include the National Telecommunications Regulatory Authority (ANRT) for the telecommunications sector, the High Authority for Audiovisual Communication for the audiovisual market, Bank Al-Maghrib for banks, the Financial Market Authority for the capital market, the Supervisory Authority of Insurance and Social Security and the National Ports Agency for ports.

There are no sector-specific provisions relating to abuse 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 the sectoral regulators. This is particularly the case for the ANRT, which has powers to settle disputes pursuant to article 7 and must inform the Competition Council of its decisions.

In January 2020, the ANRT imposed on Maroc Telecom a fine of 3.3 billion Moroccan dirhams for abusing its dominant position through several behaviours that had as an effect the prevention and delay of the competitors' access to

unbundling and the fixed market, in violation of article 7 (Decision ANRT/CG/No.01/2020).

In 2019, the Competition Council and Bank Al-Maghrib entered into a cooperation agreement, establishing the conditions and terms of their collaboration.

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).

Law stated - 16 January 2022

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, regardless of whether 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 the 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.

In its 2019 annual report, the Competition Council stated that, although it has no jurisdiction over decisions by which public tenders are awarded (which constitute acts of public service management and not economic or commercial activities), it may rule on abusive practices implemented by the undertakings that participated in those tenders.

Law stated - 16 January 2022

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, the transactions through which firms acquire or strengthen a dominant position are, in principle, examined through the Moroccan ex ante merger control procedure.

Law stated - 16 January 2022

Collective dominance

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

Collective dominance is 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.

Law stated - 16 January 2022

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 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 – a monopsony situation – enjoyed a dominant position.

Law stated - 16 January 2022

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 (nature of the products, prices and use) and from the supply side (ability to access the market in the case of a 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, Moroccan merger control rules provide for a 40 per cent market-share notification threshold.

For instance, in its Opinion A/3/21 issued in 2021, the Competition Council considered that Lesieur Cristal was dominant on the market for table oils with a 40 to 45 per cent market share.

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).

Law stated - 16 January 2022

ABUSE OF DOMINANCE

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 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) 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 the prevention, restriction or distortion of competition.

Article 7 also provides a non-exhaustive list of examples of abuse, 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.

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

Law stated - 16 January 2022

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).

Law stated - 16 January 2022

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; however, 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 conduct can be abusive if it takes place on an adjacent market to the dominant market.

Law stated - 16 January 2022

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 practices whose perpetrators can prove that the practices 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. The practices may impose restrictions on competition only insofar as these are essential to achieve this aim (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 yet pronounced itself 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.

Law stated - 16 January 2022

SPECIFIC FORMS OF ABUSE

Types of conduct

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 anticompetitive behaviour of Centrale Laitière, which was, despite its dominant position, engaged in an aggressive rebate policy.

Law stated - 16 January 2022

Tying and bundling

Under article 7 of the Law, tying sales by a dominant undertaking can be prohibited. Tying sales occur regardless of 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.

In its opinion of 2021 relating to the draft law relating to the sector of natural gas, the Competition Council assessed that any regional exclusivity concerning the distribution of gas would create a risk of abusive exploitation by the historical operators of their dominant position through tying sales (Opinion A/4/21).

Law stated - 16 January 2022

Exclusive dealing

Although 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 the prevention, restriction or distortion of 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 abuse 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).

Law stated - 16 January 2022

Predatory pricing

According to the Competition Council, an undertaking abuses its dominant position by its low-price policy when it has as its object, or the effect of, elimination of 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 their eviction.

Law stated - 16 January 2022

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 presumably should be considered abusive if it has as its object, or may incidentally result in, the restriction, restriction or distortion of competition and, in particular, excludes 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 that, compared with the prices it charges on the downstream market, do not allow a competitor to generate profits on the downstream market.

Law stated - 16 January 2022

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 EU 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 that is impossible to duplicate under reasonable conditions, preventing, consequently, the appearance of a new product or a new technology.

Law stated - 16 January 2022

Predatory product design or a failure to disclose new technology

Although there is no case law regarding these issues, the Competition Council may prohibit such practices if they have as an object or may have as an effect the prevention, restriction or distortion of competition.

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.

Law stated - 16 January 2022

Price discrimination

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

Law stated - 16 January 2022

Exploitative prices or terms of supply

Excessive prices and discriminatory or unjustified terms of supply that limit the commercial freedom of an undertaking's economic partner might be considered as exploitative abuse. Article 7 indicates in this regard that abuse may notably comprise 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.

Law stated - 16 January 2022

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, 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 to prevent the market entry of generics.

Law stated - 16 January 2022

Mergers and acquisitions as exclusionary practices

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).

Law stated - 16 January 2022

Other abuses

Under article 7 of the Law, abuse may also comprise 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 abuse provided by article 7 is not exhaustive.

Law stated - 16 January 2022

ENFORCEMENT PROCEEDINGS

Enforcement authorities

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

Under Law No. 20-13 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), the Competition Council, in addition to its consultative role to Parliament, the government, the courts and various organisations (article 5 of Law No. 20-13 relating to the Competition Council), is granted decision-making power over abuse of dominance cases. The Competition Council may be adopted by 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 also has powers of investigation. The president of the Competition Council is entitled to ask the administration to carry out any useful investigation and 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; request the communication of all professional documents (including books and bills) and copy those documents; and 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.

Law stated - 16 January 2022

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:

- adopt conservatory measures (article 35);
- order the firm to put an end to its abusive practice or impose specific conditions (article 36);
- accept remedies proposed by the firm to remove the competition concerns (article 36); 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).

If the offender is not a company, the maximum amount of the penalty is 4 million Moroccan 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 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 the 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 the 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 government authority to undertakings whose abusive practices affect a local market, provided that their turnovers do not exceed certain thresholds (article 43 of the Law).

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 Moroccan dirhams.

Finally, 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 acts by which the concentration of economic power allowing the abuse has been carried out, even if the acts have been subject to the merger control procedure (article 20 of the Law).

Law stated - 16 January 2022

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 Moroccan dirhams), the Competition Council shall refer the matter to the King's Prosecutor at the relevant first instance court.

Law stated - 16 January 2022

Enforcement record

What is the recent enforcement record in your jurisdiction?

Because Law No. 20-13 and the Law only took effect after the appointment of the new members of the Competition

Council at the end of 2018, the Competition Council issued its first annual report with its new role only in 2020.

In 2019, the Competition Council rendered 11 decisions relating to abuse of dominance cases but no decision on substance. Similarly in 2020, the two referrals of the Competition Council concerning abuse of dominant position were declared inadmissible.

However, several opinions rendered by the Competition Council have analysed the issue of dominant positions on economic sectors, such as the market of online credit card payments (Opinion No. A/3/20) and the market of table oils (Opinion No. A/3/21).

In January 2020, the National Telecommunications Regulatory Authority imposed on Maroc Telecom a fine of 3.3 billion Moroccan dirhams for abusing its dominant position in violation of article 7 of the Law.

Law stated - 16 January 2022

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).

Law stated - 16 January 2022

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 to obtain, in particular, the invalidity of an agreement or contractual clause referring to a practice prohibited by article 7 of the Law.

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 on 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 conclude a contract as the Law entitles the Competition Council to:

- impose specific conditions;
- accept remedies proposed by the dominant firm to remove the competition concerns (article 36 of the Law); or
- 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).

Law stated - 16 January 2022

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 can claim for damages before the courts, which will assess the damage suffered by the plaintiff.

For example, it appears that Inwi, a phone operator, introduced in 2021 an action against Maroc Telecom before the Commercial Court of Rabat to seek compensation for damage resulting from alleged abuses of dominant position.

Law stated - 16 January 2022

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 of 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.

Law stated - 16 January 2022

UNILATERAL CONDUCT

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 the prevention, restriction or distortion of competition, is prohibited under article 7 of 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).

Moreover, article 8 of the Law 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 exclusion from the market, or prevention from entering into a market, of an undertaking or its products. The provisions do not apply to goods or services purchased for resale in the same condition.

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.

Under article 61 of the Law, it is, in particular, forbidden for 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.

Law stated - 16 January 2022

UPDATE AND TRENDS

Forthcoming changes

Are changes expected to the legislation or other measures that will have an impact on this area in the near future? Are there shifts of emphasis in the enforcement practice?

The past three years were the first years of application of the provisions of 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 granted decision-making power over abuses of dominance cases to the Competition Council.

The Competition Council has expressed its intention to reinforce its control over the undertakings' abusive practices, and its first decisions on substance concerning abuses of dominance are expected in the future.

In 2021, the Competition Council adopted new rules of procedure, and an overhaul of the applicable legal framework might enter into force in the near future.

Law stated - 16 January 2022

Jurisdictions

	Australia	Gilbert + Tobin
	Austria	Schima Mayer Starlinger
	Belgium	Cleary Gottlieb Steen & Hamilton LLP
	Brazil	Mattos Filho Veiga Filho Marrey Jr e Quiroga Advogados
	Bulgaria	Wolf Theiss
	Canada	Baker McKenzie
	China	DeHeng Law Offices
	Denmark	Bruun & Hjejle
	Ecuador	Robalino
	European Union	Cleary Gottlieb Steen & Hamilton LLP
	France	UGGC Avocats
	Germany	Cleary Gottlieb Steen & Hamilton LLP
	Greece	Nikolinakos & Partners Law Firm
	Hong Kong	Eversheds Sutherland (International) LLP
	India	Shardul Amarchand Mangaldas & Co
	Indonesia	ABNR
	Ireland	Matheson
	Italy	Rucellai & Raffaelli
	Japan	Anderson Mōri & Tomotsune
	Morocco	UGGC Avocats
	Nigeria	Streamsowers & Köhn
	Norway	Advokatfirmaet Thommessen AS
	Poland	Linklaters LLP
	Portugal	Gómez-Acebo & Pombo Abogados
	Saudi Arabia	Al Tamimi & Company

	Slovenia	Odvetniska druzba Zdolsek
	South Korea	Yoon & Yang LLC
	Spain	.
	Switzerland	CORE Attorneys Ltd
	Turkey	ELIG Gurkaynak Attorneys-at-Law
	United Kingdom	Cleary Gottlieb Steen & Hamilton LLP
	USA	Cleary Gottlieb Steen & Hamilton LLP