



Lebanon ❖

– Joey Ghaleb †

The Republic of Lebanon¹ is located in the Middle East, lying between Israel and Syria, bordering the Mediterranean Sea.

The population is made up of a majority of Arabs (approximately 95 percent), with Armenians making up four percent, and one percent comprising of other ethnic groups. The official language in Lebanon is Arabic, with French, English and Armenian, as the other widely spoken languages.

Lebanon's capital city is Beirut, and the country is made up of six administrative divisions.

Economy

The 1975-91 civil war damaged Lebanon's economic infrastructure, cut national output by half, and all but ended Lebanon's position as a Middle Eastern entrepot and banking hub. Nevertheless, Lebanon has made progress toward rebuilding its political institutions and regaining its national sovereignty since 1991.

Under the Ta'if Accord – the blueprint for national reconciliation – a more equitable political system has been established, giving Muslims a greater say in the political process, whilst institutionalising sectarian divisions in the Government. Since the end of the war, several successful elections have been administered, most of the militias have been weakened or disbanded, and the official Lebanese Armed Forces (LAF) has extended control over all the territory. Israel withdrew from the Lebanese territory in May 2005 and the Syrian army withdrew in April 2005.

Peace has enabled the Central Government to restore control in Beirut, to begin collecting taxes, and to regain access to key port and government facilities. A financially sound banking system and resilient small and medium-scale sector have helped economic recovery. Family remittances, banking services, manufactured and farm

PROFILE	
Population:	4.2 million***
GDP (Current US\$):	39 billion***
Per Capita GDP: (Current Price, US\$)	8,880 (Atlas method)*** 14,080 (GNI at PPP)**
Surface Area:	10.4 thousand sq. km
Life Expectancy:	72 years**
Literacy (%):	90 (of ages 15 and above)****
HDI Rank:	74***
Sources: - World Development Indicators Database, World Bank, 2012 - Human Development Report Statistics, UNDP, 2012 (**) For the year 2007 (***) For the year 2010 (****) For the Year 2009	

exports, and international aid, provide the main sources of foreign exchange. Lebanon's economy has made impressive gains since the launch, in 1993, of 'Horizon 2000' – the Government's US\$20bn reconstruction programme.

During the 1990s, annual inflation fell to almost zero percent from more than 100 percent. Lebanon has rebuilt much of its war-torn physical and financial infrastructure. The Government, nonetheless, faces serious challenges in the economic arena. It has funded reconstruction by borrowing heavily, mostly from domestic banks.

The collapse of the government in early 2011 over its backing of the Special Tribunal for Lebanon and unrest in neighbouring Syria slowed economic growth to the 1-2 percent range in 2011-12, after four years of 8 percent average growth. In September 2011, the Cabinet endorsed a bill that would provide US\$1.2bn in funding to improve Lebanon's downtrodden electricity sector, but fiscal

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limitations will test the government's ability to invest in other areas, such as water.

Competition Evolution and Environment

In countries with relatively small markets like Lebanon, size can be a serious limitation. However, education and efficient institutions are more important, and more reliable sources of increasing returns than economies of scale, a lesson that Lebanon is learning well. These factors improve with competition and institutional development. These new theoretical and empirical developments support the view that institutions play a significant role in fostering competition and growth, and should, therefore, provide comfort and encouragement to small developing countries. It is in this institutional context that a competition law should be first placed.

Indeed, in small developing countries, the number of small enterprises is usually very large. In Lebanon, enterprises with at most 10 workers represent approximately 90 percent of all enterprises, which points to the existence of ample room for potential economies of scale, being a significant source of growth.

Moreover, increased competition in small developing countries may lead to a dilution of profits, which could adversely affect investment. In other words, the issue in Lebanon may be more of a need to increase the size of enterprises, and then perhaps increasing concentration to take advantage of economies of scale and increased profits for investment, rather than an issue of increasing competition.

Lebanon's open economy, with its policy of reduction of tariff and trade barriers, is a significant step towards the provision of domestic markets with more choices for consumers and, hence, more competition. In this regard, a relaxation of the official support for exclusive players would also work in the same direction of greater competition to the benefit of the consumer.

A major factor that can explain the high concentration level in Lebanese markets is the relatively small size of these markets, which is mainly determined by the size of the economy, as represented by its GDP level. High concentration implies monopolistic and oligopolistic behaviour, with the expectation of collusion among enterprises, and other restrictive practices that lead to prices being higher, and investment lower, than they would be under conditions that are more competitive.

Exclusive agents enjoy effective legal and administrative protection in Lebanon. Goods that are covered by an exclusive agency cannot be legally imported into Lebanon except by the legally entitled exclusive agent. Following an extensive debate of the issue, a draft law was sent to Parliament around 2002 proposing that government protection be gradually abolished over a five-year period.

However, and since that date, the draft was removed from the agenda and shelved. It is worth noting in this respect, that most agents no longer register their contracts with the Ministry of Economy and Trade seeking protection because they already enjoy a dominant position and can drive (via predatory pricing or other anticompetitive practice) any potential parallel importers of their products out of the market.

Competition Law

As part of its strategy aimed at integrating Lebanon into the global economy and modernising the domestic economy, the Ministry of Economy and Trade of the Republic of Lebanon worked in 2003-2005 on revamping its competition policy to be in-line with international practices. Hence, the Ministry developed an action plan, which calls for the adoption of a new modern competition law, the establishment of a competition authority, and the creation of a new enabling environment to ensure the proper implementation of the law.²

The principle objective behind a comprehensive and modern law is to ensure competition and market access by preventing anticompetitive practices and abuses of dominance, thereby maximising consumer welfare and promoting economic efficiency and innovation.

The drafting of the law in 2005 was preceded by an economic mapping of the Lebanese economy in order to understand Lebanese specificities and thus, develop a legal text that best responds and captures these specificities taking into account international best practices. The technical team engaged all Lebanese stakeholders including public and private sector representatives. The team is working with international experts from the EU, the US, France, as well as other international organisations.

Again, and as was the case with the draft law on exclusive agencies, the 2005 draft competition law was shelved for a long period. Recently, a substantial revision of the draft was conducted leading to a *watered down* version. The new version leaves the relationship with sectoral regulators vague – as far as jointly regulating anticompetitive practices – relinquishing in fact authority and jurisdiction to regulators. In other words, any future competition authority will have no say in matters related to sectors with dedicated regulators. Regulators, associations, and national champions (i.e., large dominant firms) would remain the powerful element in the equation and the government may not be in a position to change the imperfect market structures and the high concentration ratios observed in the economy.

The institutional and governance model of the competition authority was also weakened, moving away from best practice models and closer to the Lebanese *outdated* public administration system whereby the envisioned authority is no longer positioned as an autonomous and independent

authority. Other weak points include the shortening of the new draft, which now overlooks key sections and details that are critical to be spelled out in a country with no history in regulating competition affairs. For instance, defining the types of agreements (e.g., vertical versus horizontal) and the *de minimis* rules were omitted, similarly the draft law no longer stipulates clearly what is prohibited outright and what is subject to assessment.

In practice, the Lebanese economy is an open and free economy, and only a few prices are directly regulated. The norm is that sellers freely set the prices of their products, subject only to market considerations. Legally, however, although never enforced, the Minister of Economy & Trade has the right to set a ceiling on commodity selling prices or profit rates. Where no ceiling is indicated, the maximum selling price should not exceed twice the amount of the cost.

While regulated prices are relatively few, the Government has implemented liberalisation policies that seek to promote competition, through the elimination of existing restrictions in regulated markets. The introduction of the Open-Skies policy³ in 2000, has cancelled the ‘5th Freedom Rights’ enjoyed by the national carrier.

Draft laws regarding the liberalisation of oil and medicinal drug imports have also been placed in the Parliament, whereby price ceilings rather than price levels are set. Moreover, as previously noted, a draft law has been submitted to the Parliament proposing the abolition of official protection of exclusive agencies over a five-year period.

Anticompetitive Business Practices

Although agreements between sellers are difficult to detect, indirect evidence can point to their existence. Cellular phone services in Lebanon, until recently, were provided by a duopoly, Cellis and LibanCell. The fact that call rates charged by these two enterprises have been practically identical since their inception a few years ago, thus presenting strong *prima facie* evidence of collusion on prices. In fact, cellular phone rates are quite high in Lebanon (in US currency): 13 cents per minute for dedicated lines, plus an upfront fee, and 35 cents for prepaid phone cards, versus three to eight cents in other Arab countries. The government has since nationalised the two companies and is currently offering a management contract to run the two networks. The Telecommunications Regulatory Authority (TRA), itself has been weakened, with a greater involvement by the minister and an impartial implementation of the law that governs the sector.

In Lebanese markets, formal agreements may be few but not necessarily informal. A manifestation of the existence of agreements, amongst sellers, is the absence of price competition, and a unison movement of prices charged by sellers in the market. Agreements, however, do not exclude

competition in other domains, such as advertising and selling terms.

Product discrimination is also exercised in Lebanese markets. It involves charging different prices for the same product, packaged and sold under different brand names. Examples are canned foods, and so-called white goods, such as refrigerators and gas cookers, etc.

Despite the fact that the principle of concessions and private sector participation in public service delivery dates back to the turn of the 20th century, (e.g., private concessions to operate the seaport of Beirut granted in the early 1900s and to several firms to generate electricity across the country), privatisation – as defined in the 1980s – is a relatively recent one in Lebanon. It has been mainly prompted by the need to improve efficiency in the delivery of public services. Over the years, since the late 1980s, the public enterprise, *Electricité du Liban* (EDL) – a state-owned company – has accumulated large amounts of losses and debt. These, and other financial developments, have led to an alarming increase in the fiscal deficit and in public debt, necessitating radical reforms, of which privatisation is a major component.

Public ownership of these companies came about following government financing, over a number of years of continuous operating losses in these companies, and of capital asset purchases in the case of EDL. The cellular phone companies, Cellis and LibanCell, are private companies where ‘privatisation’ would involve the sale or long-term rental of the national cellular transmission rights that are public property.

The EU-Lebanon Association Agreement governing relations in the field of competition entered into force on April 01, 2006. Under Article 35 of the Agreement, anti-competitive agreements between undertakings and abuses of a dominant position are incompatible with the agreement if they affect trade between the parties.

Lebanon currently has no general competition law in force. Lebanon participates in the European Neighbourhood Policy, and there is an EU/Lebanon Neighbourhood Policy Action Plan (which is not a binding international agreement), including some points on competition (and State aid).

Sectoral Regulation

Telecommunications

Several laws have been passed in the past few years to speed up the privatisation process. All started with the Privatisation Law No. 228 of May 2000, which has set, amongst its main objectives, the enhancement of the competitiveness of the economy and the protection of consumers’ interests, objectives that are very much in line with what privatisation should, in principle, achieve.

The Privatisation Law was followed by the Investment Promotion Law No. 360 of August 2001. This law established the Investment Development Authority of Lebanon (IDAL) and accorded the highest priority to Information Technology projects. Subsequent laws have focused on the sectors being primed for privatisation, namely, telecommunications and electricity.

The Law on Telecommunications No. 431 of July 2002 allows for the entry of a third operator in cellular phone services. Clearly, this should allow for more competition and a decrease in prices, though collusion among three enterprises in a lucrative market remains highly probable. This law also stipulates the establishment of a TRA, which should encourage competition in the market and, at the same time, generate more revenues for the state.

Box 1: Lebanon to Get Third Mobile Network

The country's Telecom Ministry was expected to re-start its liberalisation plans in 2005-2006, paving the way for the restructuring of Ogero, the fixed line operator. Ogero was (and still is) expected to take up its existing mobile licence when it is re-formed into Liban Telecom, despite some unfounded – political - concerns that there might not be room in the sector for three operators.

The move, when it happens, would give the Lebanese mobile market a unique structure with three state-owned operators, unless moves towards privatisation emerge earlier than expected. Third parties manage LibanCell and Cellis (now under the legal name of MTC and Alfa), the two existing operators, but remain in the Government's hands after an effort to sell them came to an end in 2003. The creation of a third player would, therefore, increase calls for a clear re-commitment by the Government to liberalise and privatise, analysts say.

Cabinet approval is expected for the Telecom Regulatory Authority's (TRA) new board membership, replacing the outgoing team led by Lebanese economist Kamal Shehade, who resigned from his post in 2010 citing personal reasons.

Source: <http://www.itp.net/news/details.php?id=13251&category, 11.10.2014>

Electricity

The Law on the Regulation of the Electricity Sector No. 462 of September 2002 establishes administrative and financial independence for the separate phases of production, transmission and distribution of electrical power. Privatisation is projected only for production and distribution activities, with transmission to remain publicly owned. The Law also stipulates a Regulatory Authority

for the sector. The authority has yet to be established, in large part due to political factors and a *rapport de force* between the Ministry and the potential regulator over mandate and powers.

Other Sectors

In late 2011 and early 2012, the Lebanese government enacted laws and regulations setting up an authority to regulate the oil sector. Lebanon is expected to become an oil-producing country and the process of exploration has been launched. It is early to judge on the potential role of the private sector and whether the regulator would be able to promote a fair and competitive environment in this sector. However, one can be skeptical from observing the hasty and politically charged process that led to the enactment of the relevant laws, this coupled with the fact that no competition authority was part of the decision-making process.

The prime candidates for privatisation in Lebanon remain in the telecommunications and to a lesser extent in the electricity sector. These are sectors with significant economies of scale that, given the size of the Lebanese market, may give rise to natural oligopolies.

Presently in Lebanon, the national regulatory authority for telecommunications is the Ministry of Post and Telecommunications. The distinction between the operational function and the regulatory function is not yet established. The law of privatisation is, however, providing for such a distinction.

Other Regulatory Bodies

The Central Bank has been designated as a regulatory authority for all e-banking activities as of November 1999.

The Ministry of Information is the regulatory authority regarding radio and TV broadcasting. The authority of this Ministry is based on a recent Audio-Visual Media Information Law (AVIL).

The protection of economic competition is presently under the authority of two ministries: the Ministry of Justice and the Ministry of Economy & Trade.⁴ The latter ministry is entrusted with issues related to competition, consumer protection, trade and insurance, among others.

Consumer Protection

Legally, consumer protection comes under the purview of the Ministry of Economy & Trade. In this regard, consumer protection basically concerns matters related to consumer prices and the quality of goods. A new and modern consumer protection law was passed in February 2005 in Lebanon and entered into operation in May 2005.

The objective of the new Law is to:

- outline the general rule concerning the protection of consumers and the safety and quality of goods and services;

- assert consumer rights and guarantee the transparency of economic transactions in which the consumer may engage; and
- protect consumers from fraud and misleading advertisements and prevent their exploitation.

The consumers shall have, among others, the following rights that shall be exercised in accordance with the provision of this Law:

- The right to protect his or her health and safety when goods and services are used under proper conditions;
- The right to receive fair and non-discriminatory treatment from the supplier of goods intended for local consumption or for exportation;
- The right to receive exact, clear and sufficient information about goods or services and about the price, description and method of use of such goods and services and the potential risk that they may pose;
- The right to exchange or repair the goods or to get a refund of the prices already paid for services, which, when used under proper conditions, do not comply with the applicable or agreed standards, or with the purpose for which the goods or services are acquired;
- The right to obtain full compensation for damage resulting from the consumption of goods or the use of services, when used under proper conditions;
- The right to establish and adhere to Consumer Protection Associations; and
- The right to sue for damages or for the assertion of his rights, on his own or through Consumer Protection Associations.

Concluding Observations and Future Scenario

It is suggested that the following principles ought to be embedded in the upcoming competition law for Lebanon.

Reduction of Barriers to Entry and Exit

The reduction of barriers to entry and exit, rather than concentration *per se* should be the focus of the competition law and the overriding principle of competition policy, in general. The approach is particularly convenient for Lebanon since it would be the least intrusive into the process of economic activity, as well as the approach least subject to pressures by interest groups. It would also benefit the SMEs, which constitute more than 90 percent of all enterprises operating in Lebanon. This would enhance their

competitive strength since their ‘access’ to administrative, and other, privileges is weaker compared to that of large enterprises.

Reporting of Seller Agreements

Competition laws usually deal with matters of conduct or behaviour rather than structure. They make illegal such practices that constrain competition. Lebanese laws, on the other hand, as noted above, are ambiguous and, when specific, only refer to ‘fraud’ and ‘false information’.

Question of Restrictive Practices

The new competition law should address the whole *question of restrictive practices*. Clearly, on both grounds of principle and feasibility, the Law cannot make all restrictive practices illegal. However, it can demand the reporting, by sellers, to a competition authority of all their restrictive agreements, explicit or implicit. This, currently, is the case in the EU where companies notify the Commission of their agreements, in order to escape fines. In the case of Lebanon, the competition law can restrict charges of illegality to a few practices, such as agreements to fix prices, and to share markets or sources of supply.

Appeals in Civil Court

It is recommended that a competition authority, with autonomous powers of decision-making, enforces the competition law, at a first level of ruling, which can then be appealed, if necessary, in a regular court of law.

As explained, the draft competition law was shelved and a recent version has been significantly watered down and deemed not in-line with best practices.

It is important to stress, particularly in the Lebanese context, that the establishment of an official competition authority, though desirable in itself, nonetheless carries the risk of an added bureaucracy that could be subject to political and interest group interference, especially in view of the economic stakes involved. These considerations lead to the following recommendations regarding the attributes of the competition authority:

- It should be independent, small and professional; and
- Its mandate would be mainly to review notified agreements and adjudicate cases of restrictive practices. Appealed cases would be taken up by the Civil Courts.

Suggested Readings

Competition in the Lebanese Economy, a Background Report for a Competition Law for Lebanon, Ministry of Economy & Trade, Republic of Lebanon, www.economy.gov.lb

Highlights of the Economic Policy of the Lebanese Government (Extracted from the Ministerial Policy Statement), November 2000.

“Trade and Competition Policies Growth in Lebanon: A General Equilibrium Analysis”, *Review of Middle East Economics and Finance*, volume 4.1: 2009 – Authors: Sebastien Dessus and Joey Ghaleb

Endnotes

- 1 <http://www.cia.gov/cia/publications/factbook/geos/le.html>
- 2 <http://www.economy.gov.lb/MOET/English/Panel/EconomicResearchAndPrices/EconomicResearch/Competition.htm>
- 3 http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=3&article_id=10000
- 4 Ministry of Economy & Trade, Government of Lebanon, www.economy.gov.lb

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