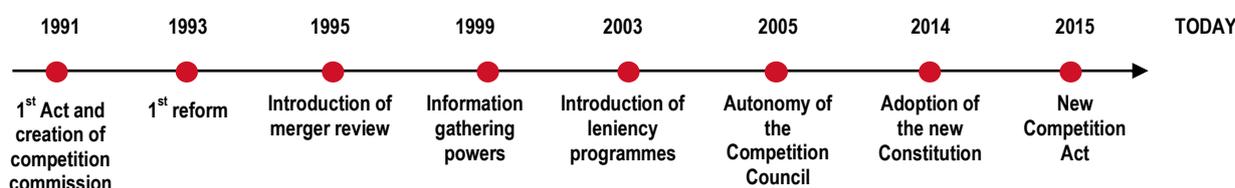


# OECD PEER REVIEWS OF COMPETITION LAW AND POLICY: TUNISIA 2022

HIGHLIGHTS • [WWW.OECD.ORG/DAF/COMPETITION](http://WWW.OECD.ORG/DAF/COMPETITION)

## Highlights

In 1991, Tunisia was one of the first countries in Africa and the Middle East to adopt a competition law. This law has been revised several times since, culminating in the adoption in 2015 of the legal framework that is currently in force. The 2015 Competition Act enshrines all the principles relating to restrictions on competition, banning anticompetitive or discriminatory practices and establishing control over mergers. The objectives of the law explicitly include “ensuring overall market equilibrium, economic efficiency and consumer welfare”.



The scope of Tunisian competition legislation is broad and applies to any entity carrying out an economic activity likely to affect the general equilibrium of the internal market. These entities include natural persons, domestic and foreign businesses, private and state-owned businesses and public authorities, as well as associations and non-profit legal entities. Competition law in Tunisia applies across the board to all sectors. However, the insurance, banking, audio-visual and microfinance sectors are subject to specific provisions applied by sectoral regulatory authorities.

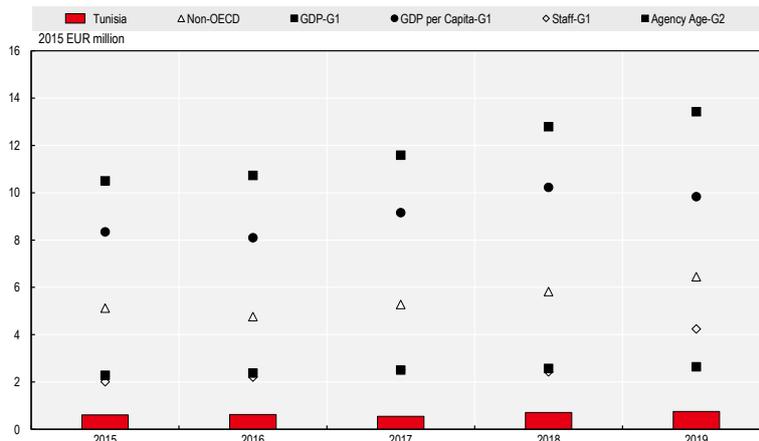
## Institutional framework

Tunisia has two institutions in charge of competition policy and enforcement: an independent authority – the Competition Council – and a competition department (DGCEE) within the Ministry of Trade. The former performs two main functions: a jurisdictional function and an advisory function. It comprises 15 members whose mandates are no longer renewable since 2015. Its budget is attached to the Ministry of Trade and the minister sets the remuneration package for its president and two vice-presidents. The Ministry of Trade, through its competition department, is in charge of the development, implementation and

enforcement of competition rules and is the institution primarily responsible for merger control.

The human and budgetary resources allocated to the country's competition bodies are relatively modest by international standards. A detailed analysis of budgetary and human resources data on countries participating in OECD's COMPSTATS database shows that the resources of the Tunisian Competition Council remain well below the average level of all competition authorities in comparable nations (Figure 1).

**Figure 1. Budget of the Competition Council versus peers**

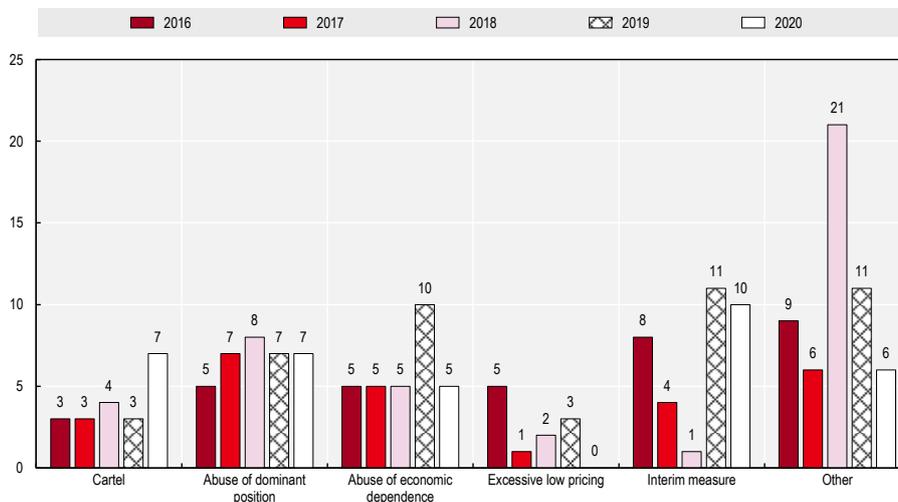


Note: Beyond the "non-OECD" group which includes 18 non-member countries, the "GDP-G1" group to which Tunisia belongs includes 22 countries with a GDP below 250 billion EUR, the "GDP per capita-G1" includes 26 countries with an average per capita income of less than 25,000 EUR, the "Staff-G1" group includes 22 countries with a fewer than 35 officials dedicated to competition-related activities and the "Age of authority-G2" group includes 29 countries whose competition authorities have been established for 25-50 years. Source: OECD COMPSTATS database.

## Anti-competitive conduct

The Competition Act establishes a non-exhaustive list of practices that are considered anticompetitive in Tunisia, including cartels, abuse of a dominant position, abuse of economic dependence and excessively low prices. In terms of enforcement, the Competition Council rendered 94 decisions from 2016-2020, distributed as shown in Figure 2.

**Figure 2. Competition Council antitrust decisions (2016-20)**



Source: Competition Council

Both the DGCEE and the Competition Council may conduct investigations (e.g. unannounced inspections) of suspected anticompetitive practices. To avoid any duplication of investigative efforts, Tunisian law stipulates that the Ministry of Trade must inform the Competition Council of ongoing investigations, and vice versa.

An investigation of a suspected anticompetitive practice can be triggered in one of three ways: i) a complaint by a third party, ii) a leniency application or iii) self-referral (ex officio) by the investigating authority. During 2016-2020, there were 23 self-referrals (ex officio) investigations, nine of which were initiated by the DGCEE and 14 by the Competition Council. Approximately five investigations are initiated by self-referral each year.

In terms of setting fines, the Competition Council may impose fines on companies up to 10% of their turnover in a given financial year. For individuals that have played a decisive role in an infringement, penalties include prison sentences of 16 days to one year and possible pecuniary sanctions. The minister of trade is responsible for implementing the decisions of the Competition Council.

## Merger control

Review and control of mergers that fulfil the conditions laid down in the Competition Act is under the horizontal jurisdiction of the Ministry of Trade. Sector-specific legislation provides for derogations concerning transactions in the insurance, banking, microfinance and audio-visual sectors. In addition, Tunisia is a member of the Common Market for Eastern and Southern Africa (COMESA), which has competence to review mergers with regional dimensions, although national and supra-national authorities provide different interpretations of the regional provisions concerning the duty to notify. The law lays down two alternative conditions for notification, one based on the acquirer's turnover and another based on combined market shares. Between 2015 and 2020, the Ministry of Trade reviewed 26 transactions, blocking only one merger and clearing three subject to conditions.

Notification starts the clock on a three-month period within which the minister of trade must adopt a decision. The timeframe remains the same irrespective of the complexity of any competition concerns. The Competition Council issues only a non-binding opinion that is usually followed by the minister. The assessment aims to determine whether the merger is likely to create or strengthen a dominant position in the domestic market or a substantial part of it. The analysis is mostly legal rather than focussed on assessing the likely economic impact of the concentration. The standard analysis is not however limited to competition. The minister must also verify whether the merger would make a sufficient contribution to technical or economic progress to offset any harm to competition as well as whether it is needed to consolidate or preserve the competitiveness of domestic companies in the face of international competition. The final decision on this trade-off is then adopted by the minister of trade.

The final decision can involve the imposition of structural or behavioural remedies, but analysis has shown that in practice measures are predominately behavioural, and since 2016 no authorisation decisions have involved structural remedies.

## Advocacy

The relevant departments of the Ministry of Trade must co-operate with the Competition Council in the implementation of programmes and plans to raise awareness and promote a culture of competition.

The opinion of the Competition Council must be requested on all draft laws and regulations imposing conditions for the exercise of an economic activity or profession or establishing restrictions that may hinder access to the market. This opinion accompanies the draft legislation and the legislator must explain the extent to which those suggestions have been taken into account and, where appropriate, the reasons why they could not be taken on board. Beyond cases of mandatory consultation, several public bodies (parliamentary committees, the minister of trade and the sectoral regulatory authorities) may consult the Competition Council on matters relating to competition. However, the Competition Council is not in a position to raise issues and submit proposals on its own initiative before the minister of trade or another government minister.

Market research is an effective tool to examine competitive conditions in one or more sectors. However, neither the Competition Council nor the DGCEE have conducted any market sector studies to date, nor have they put any guidelines or methodology in place for future studies.

The DGCEE and the Competition Council employ several soft tools to promote a culture of competition, including a website to disseminate decisions and other relevant information, agreements with universities, trainings and workshops with the industry and sectoral authorities, and publications. However, they have not always been successful in promoting a competition culture, as demonstrated for example by the very low rate of adoption of competition law compliance programmes by firms, irrespective of their scale.

## National, regional and international co-operation

There is also room to improve the framework for co-operation with national and foreign authorities. At the national level, with the exception of the Memorandum of Understanding signed in 2012 with the National Telecommunications Authority, there are no formal co-operation agreements in place between the Competition Council and the sector regulators. At the international level, although the Competition Council and competent departments of the Ministry of Trade may share experience, information and documents relating to the investigation of competition cases with foreign counterpart institutions, the number of co-operation agreements with foreign authorities is very limited and the existing ones have not been effective. At the regional level, Tunisia is a member of COMESA but so far, regional provisions on competition have been the object of conflicting interpretations.

## Key Recommendations

1. Strengthen the **mandate and powers** of the Competition Council and ensure its independence, including by clarifying and separating powers with the Ministry of Trade.
2. Strengthen the Council's **budgetary and human resources**, including by exploring funding avenues outside of its government budget allocation.
3. Promote the use of the **leniency programme** and improve the use of **ex-officio techniques** for investigations as instruments to fight hard-core cartels.
4. Enable the Competition Council to negotiate and conclude both **settlement** and **commitment** decisions related to all anti-competitive practices.
5. **Transfer responsibility for merger control** to the Competition Council with clearly defined assessment criteria, and grant the minister of trade, in exceptional circumstances, powers to adopt a different decision based on reasons of public interest laid down in the law other than the protection of competition.
6. Review **notification criteria** by adding a target-related limb to the turnover-based notification threshold and considering the advantages and disadvantages of market share-based thresholds.
7. Introduce a **simplified procedure** for notifications of simpler mergers that do not raise competition concerns.
8. Give the Competition Council the **power to submit proposals** to the Ministry of Trade on legislative and regulatory texts (acts, government decrees, orders and specifications) on its own initiative, without prior consultation.
9. Develop **public guidelines** to enhance legal certainty and predictability of action by competition authorities, for example, in defining relevant markets, calculating fines, and analysing certain types of agreements.
10. Improve **co-operation** with sector regulators and regional and international institutions.

### Peer Reviews of Competition Law and Policy

OECD peer reviews have proved to be a valuable tool for countries to reform and strengthen their competition frameworks.

The mechanisms of peer reviews vary, but they are founded upon the willingness of a country to submit its laws and policies to substantive questioning by other peers.

The process provides valuable insights into the country under study, getting to the heart of ways in which each country deals with competition and regulatory issues, from the soundness of its competition laws to the structure and effectiveness of its competition institutions.

Furthermore, these reviews incorporate recommendations for changes in government policy.

[Argentina \(2006\)](#)

[Brazil \(2010, 2005, 2019\)](#)

[Chile \(2004\)](#)

[Colombia \(2009\)](#)

[Costa Rica \(2014\)](#)

[Czech Republic \(2008\)](#)

[Denmark \(2015\)](#)

[El Salvador \(2008, 2020\)](#)

[Ecuador \(2021\)](#)

[European Union \(2005\)](#)

[Eurasian Economic Union \(2021\)](#)

[Greece \(2018\)](#)

[Honduras \(2011\)](#)

[Kazakhstan \(2016\)](#)

[Latin America \(2006, 2007, 2012\)](#)

[Mexico \(2004, 2020\)](#)

[Panama \(2010\)](#)

[Peru \(2004, 2018\)](#)

[Romania \(2014\)](#)

[Russia \(2004\)](#)

[South Africa \(2003\)](#)

[Chinese Taipei \(2006\)](#)

[Turkey \(2005\)](#)

[Ukraine \(2008\)](#)

[Vietnam \(2018\)](#)