

October 04th, 2010

DR. MARTIN BECK
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Jordan's New Draft Competition Law: Achievement Made, Improvement Required

Under the patronage H.E. Amer Al-Hadidi

Event: International Workshop
Date/Place: September 27th, 2010, Talal Abu-Ghazaleh Forum
in Talal Abu-Ghazaleh College of Business Amman, Jordan
Concept: Mustafa Nasereddin, Dr. Martin Beck
Organisation: KAS Amman Office, Talal Abu-Ghazaleh and
Company International (TAGI)

Tuesday, September 27th, 2010

1. Overview

Opening

Talal Abu-Ghazaleh Organization
Amman – Jordan

Mustafa Nasereddin
Senior Executive Director

Konrad-Adenauer-Stiftung
Amman – Jordan

PD Dr. Martin Beck
Resident Representative

Ministry for Industry and Trade
Amman – Jordan

H.E. Amer Al-Hadidi
Minister for Industry and Trade

First Panel: Practical Needs for Amending Competition Law

Ministry for Industry and Trade
Amman – Jordan

Hussein Al-Hamadani
Director of the Competition Directorate

Second Panel: The Jordanian Experience in Comparison with Other Countries in the Arab Region

Senior Advisor to the Minister of Trade
Tunis – Tunisia

Mohamed Ben Fraj
Competition Expert

Third Panel: Presentation of the Draft Competition Law by the Joint Working Group of Talal Abu-Ghazaleh Organization and KAS Amman Office

Senior Advisor to the Minister of Trade
Tunis – Tunisia

Mohamed Ben Fraj
Competition Expert

North Amman Court
Amman – Jordan

Dr. Amjad Al Shraideh
Judge

Assistant Professor at the Faculty of Law

Dr. Qais Mahafzah

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October 04th, 2010

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University of Jordan
Amman – Jordan

Nabulsi & Atout Law Firm
Amman – Jordan

Legislation and Opinion Bureau
Amman – Jordan

Lawyer

Omar N. Atout
Senior Partner

Tareq Abu Saleem
Legal Researcher

2. Objective

Jordan was one of the first Arab countries to pass a competition law in 2004 in order to foster the country's economic development and to adapt to international standards. Although its implementation seemed to be successful, the new law revealed in the course of its assessment several shortcomings. In 2009 KAS Amman and Talal Abu-Ghazaleh and Company International (TAGI) organized a first joint workshop on "National Strategy Towards a Modern Competition Law for Jordan" to define the substantial principles of a modern competition law and to develop an adequate law for Jordan according to international best-practice experiences. In the end of this workshop KAS and TAGI agreed on forming a joint working group of judicial and economic experts to continue working on possible amendments of the 2004 Jordanian competition law and its implementation. The workshop "Jordan's New Draft Competition Law: Achievement Made, Improvement Required" took place under the patronage of the Minister of Industry and Trade, **HE Amer Al-Hadidi**. High-ranking Arab experts from the political, economic, judicial and academic sector discussed during the workshop the new draft competition law for Jordan and possible amendments. The experts especially focused on a comparison between the Jordanian experiences and insights of other Arab states.

3. Details

Mustafa Naserredin, Senior Executive Director of Talal Abu-Ghazaleh Organization opened the international workshop by pointing at the relevance of a suitable economic environment in the framework of a sustainable economic development to foster the competitiveness of the private sector. He stressed that expanding investments and promoting economic development are the key factors for enhancing economic progress. **Mustafa Naserredin** furthermore underlined the importance of improving the competition law with respect to the realization of the Millennium Development Goals in Jordan.

Dr. Martin Beck emphasized in his welcome speech the relevance of an effective competition law for the modernisation process in Jordan. An effective law adapted to international standards would increase direct foreign investment, cut monopolies and oligopolies and promote a fair price system. All Jordanians would therefore benefit from a modern competition law which is tailored to the needs of the country. **Dr. Martin Beck** welcomed that the workshop offers decision makers the opportunity to learn more about the amended competition law thereby improving its implementation.

HE Amer Al-Hadidi, Minister for Industry and Trade of the Hashemite Kingdom, identified the significance of a sound competition law as a key factor for a sustainable economy. A modern competition law con-

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tributes to improve the living standard, supports the economic activities of small and medium-sized companies and enables them to compete in the global market. **Amer Al-Hadidi** pointed out to the GDP increase of 7.8% in Jordan last year and emphasized Jordan's pioneering role in the Middle East regarding the implementation of the competition law. He furthermore indicated that there is an increasing need of training courses to acquire additional qualified employees in the Ministry. **Mr. Al-Hadidi** informed the participants that 280 competition cases were dealt with by the responsible institutions so far.

In the first workshop panel **Hussein Al-Hamadani**, Director of the Competition Directorate of the Ministry of Industry and Trade, touched upon the issue of "Practical Needs for amending Competition Law". He explained the necessity to amend the competition law by highlighting the need to facilitate the tasks of judges, to promote the prosecution of infringements of the competition law and new provisions to the benefit of consumers.

In the course of his lecture, **Mr. Al-Hamadani** discussed in detail the revised articles of the new competition law. The amendment of Article 6, which for the first time considers price rigging as an illegal practice, was at the heart of his analysis. **Mr. Al-Hamadani** said the ministry would strictly deal with price rigging and use comprehensive studies and foreign expert assistance.

He then argued that an article to guarantee the forwarding of all required information for a competition case to the Ministry of Industry and Trade should be included in the draft competition law. Until now, all parties involved are not forced to transfer these data to the ministry. This new provision is closely linked to the general aim to accelerate the long-winded examination processes. According to Article 17 of the amended version the evaluation of the information

should be based on a comprehensive legal study by the ministry, which will be supplemented by an economic study if a violation of the competition law is suspected. Although the ministerial study has no binding character, the parties involved should seek for the opinion of the ministry in reference to the competition case. The 2004 competition law requests the ministry in particular to conduct studies on monopoly building and distorting competition. The Court of First Instance is, however, the institution empowered to finally decide in competition cases.

Hussein Al-Hamadani closed his lecture informing the participants that the penalty following a proven violation of the law would now range between 5,000 JD to 100,000 JD (back than it was 1,000 JD to 50,000 JD).

Mohamed Ben Fraj, Competition Expert and Senior Advisor to the Minister of Trade in Tunisia, started the second panel with a lecture on "The Jordanian Experience in Comparison with other Countries in the Arab Region" and stressed that there is a lack of long-time experiences in the implementation of a sound competition law in the Arab region. At the end of the 1990s, Tunisia, Algeria and Mauritania were the first that implemented a competition law, followed by Morocco, Jordan, Egypt and Saudi Arabia between 2000 and 2005 as well as Syria and Qatar after 2005. In this context, **Mohamed Ben Fraj** pointed at the common challenges these economies had to face. They feared negative effects of the transformation process to market economies, the integration into a regional trade association and price liberalization policies. In order to avoid monopolies and all kinds of violations of market power, structural market reforms had become necessary. As a country whose free and open economic system is based in large part on services Jordan should have a particular interest in implementing a comprehensive competition law.

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Both the Arab states in the Middle East and in the Maghreb have in common that they strive for the adoption of international standards in competition law. However, it should not be ignored that terms differ from one country to another, such as for the definition of taking advantage of a dominant economic position, which is characterized as unlawful. Further differences exist with regard to the scope and implementation of competition laws. **Mohamed Ben Fraj** made clear that the competition law in the Maghreb, Jordan and Syria covers all sectors of the economy while the public utilities sector in Egypt, Saudi Arabia and Qatar is not covered. In respect of the institutional aspect, the countries of the Maghreb stood out by the fact that special organisations, empowered with advisory and jurisdictional competences, are involved in the decision-making process. Though the Jordanian competition law enjoys a good reputation on the international level, it now faces the challenges of optimising its implementation through thorough regulation. **Mr. Ben Fraj** then raised concerns about the limited time and resources of the Court of First Instance. Therefore, further reforms should aim at establishing mechanisms for legal consultation in competition cases. The competition directorate is not equipped with the resources necessary to guarantee a comprehensive prosecution of anticompetitive behaviour and is not an institution independent from the Ministry. On this account, future reforms should seek to create an independent body.

Mr. Ben Fraj closed his presentation with the recommendation to expand the capacities of the competition directorate and to carry out awareness campaigns in order to sensitize both consumers and producers for the amended competition law.

In the general discussion following the speech of **Mohamed Ben Fraj**, three main aspects were discussed by the participants. Several times attendees referred to Article

19, which authorizes the Minister for Industry and Trade to either transfer a potential violation of the competition law to the Court of First Instance or to address the matter itself. It was stated that the Ministry should transfer the competition case to the Court in any case. According to **Mr. Al Hamadani** this law reflects the international practice and allows corporations engaged in the violation of the competition law to correct their behaviour in a timely manner. Aside from these arguments, he clarified that the findings of the Ministry do not have any binding character. However, its opinion should be considered in all cases.

Moreover, attendees of the workshop raised the concern that foreign companies could be discouraged to invest in Jordan as the Ministry requires the provision of comprehensive data to investigate a potential violation of the competition law. It should be ensured that the Ministry only gets access to those data that are required to assess if there was a violation. **Hussein Al-Hamadani** emphasized that the 2004 competition law already only guarantees the forwarding of data required by the Ministry for the purpose of investigating unfair competition. The implementation and functioning of the competition law is of utmost importance for foreign companies and investors. All information provided by the companies and investors will be treated confidentially. The very lively discussion revealed that some participants were of the opinion that the staff member of the ministry engaged in competition issues are not trained well enough. **Hussein Al-Hamadani** assured to carefully consider the issue and to use the fees charged in connection with the violation of the competition law for financing training courses in competition law.

In the context of the third presentation, Dr. **Amjad Al Schraideh**, judge at North Amman Court, **Dr. Qais Mahafzah**, lawyer and Assistant Professor at the Faculty of Law at

Konrad-Adenauer-Stiftung e.V.

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the University of Jordan, **Omar N. Atout**, Senior Partner of Nabulsi & Atout Law Firm and **Tareq Abu Saleem**, legal researcher of the Legislation and Opinion Bureau in Amman, presented the outcomes of the joint working group of TAGI and KAS Amman.

Dr. Amjad Al Shraideh underlined the fruitful cooperation within the joint working group, which has worked for the implementation of a modern competition law in Jordan for more than one year. The consultations about amendments of the competition law were geared to avoid limitations concerning the exchange of goods and individuals, to foster innovations and to support the local market in expanding the institutional capacities. While **Dr. Qais Mahafzah** spoke in favour of the adjustment of the Jordanian competition law to the WTO-agreements, **Mohamed Ben Fraj** emphasized the importance of a solid competition law with regard to the Jordanian policy of trade, investment and prices. In order to protect small- and medium-sized enterprises, Article 4 of the competition law is of fundamental significance, **Dr. Amjad Al Shraideh** said. Article 4 defines the conditions required to facilitate mergers between small- and medium-sized enterprises, which in turn enables them to compete on an international level. Nevertheless, some sectors within the Jordanian economy, as for example the sector of telecommunication, energy and banking, are still controlled by only a few companies. The challenge at this stage is to find a balanced approach between the prosecution of competition violations and the support of local markets.

Up to what extent is the Jordanian industry in a position to compete internationally and able to engage in competition with foreign companies? Does the process of economic opening in Jordan implicate a financial burden on the state, which could find itself in a situation where it has to veil the lack of competitive Jordanian products through state subsidies? These questions were at the centre of attention during the final dis-

ussion which was characterized by a highly active involvement of the participants. Several attendees expressed the fear that opening Jordan's economy could hit many national companies. The lack of competitiveness would put additional burdens on the fiscal scope of the state in the medium term. **Dr. Amjad Al Shraideh** argued that the Jordanian economy is actually able to compete in the sectors of medical provision and electronics. **Mohamed Ben Fraj** shared the concern about the fiscal burden and pointed out to the limited financial abilities Jordan disposes of to subsidize national companies. On the other side, small- and medium-sized enterprises partly would be excluded from the liberalization-process.

Again, the Ministry was called to forward every competition case to the general prosecutor. **Hussein Al-Hamadani** replied that in such a case decision-making would be delayed. This would allow companies violating the competition law to continue their unlawful behaviour over a longer term without any penalty. According to **Hussein Al-Hamadani**, 46 out of 51 competition cases were dealt with by the Ministry so far while 5 were forwarded to the Court of First Instance.

In his closing speech, **Mustafa Naserredin** thanked all members of the joint working group for a great and successful cooperation. One should not ask if, but what industries should be supported through subsidies. This is also a common practice in both the EU and the US.

Dr. Martin Beck expressed his gratitude towards the participants of the workshop for a highly intensive and productive discussion. According to him, a sound knowledge among decision-makers both of law and economics would be crucial to assure a sustainable and efficient implementation of the competition law. In this respect, the workshop also revealed that politics are much more important than it seems to be at first

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sight. For instance, should Jordan protect its national industry against international competition? If so, up to what degree? Moreover, what does the law mean for the reputation of Jordan in the international context?

Dr. Martin Beck highlighted the importance of meeting global standards in competition law, which would be to the benefit of the Jordanian economy and people. **Dr. Martin Beck** thanked Talal Abu Ghazaleh Organization and **Mustafa Nasereddin** in particular for a very successful cooperation.

4. Conclusion

The drafting and implementation of an efficient competition law for Jordan, which meets international standards, is of utmost importance to guarantee the functioning of market competitiveness. The joint workshop of TAGI and KAS Amman offered an opportunity for experts with political, economic, legal and academic background to read up on the amendments of the competition law and to bring in new ideas during the discussion. The very lively and productive exchange of opinions and thoughts revealed a great interest in additional information concerning the topic. Again, with the Minister of Industry and Trade, **HE Amer Al-Hadidi**, KAS Amman was able to win a high-ranking member of the Jordanian government for patronage of the event. This workshop made evident that KAS Amman succeeded in resuming the fruitful and intensive cooperation with Talal Abu-Ghazaleh Organization and could feed in expertise in the competition law. The media coverage of the event reflects the successful work of KAS Amman in the field of economic policy in Jordan. 17 Arabic and four English news sources reported.

The press reports are available here: <http://www.ameinfo.com/243299.html>.