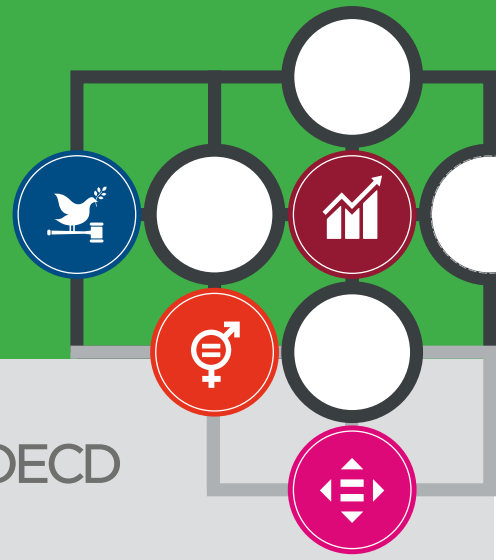


# Fourth ARAB COMPETITION FORUM (ACF)

23-24 May 2023  
Riyadh, Kingdom of Saudi Arabia



Shared Prosperity Dignified Life



الهيئة العامة للمنافسة  
General Authority for Competition



E/ESCWA/ACF/2023/INF.5

## Background note

### Enhancing the effectiveness of competition authorities in developing and least-developed countries

The present background note was produced by the United Nations Economic and Social Commission for Western Asia (ESCWA) for the session “Enhancing the effectiveness of competition authorities in developing and least-developed countries” of the Fourth Arab Competition Forum 2023.



### Overview

Competition authorities in developing and least-developed countries (LDCs) play a vital role in driving sustainable development. These agencies are essential to enforce competition law and have other core responsibilities such as competition advocacy and consumer protection. They often find it challenging to function effectively in LDCs due to issues relating to national legislation, resources, or political economy. However, competition authorities can overcome these challenges and enhance their effectiveness through evaluation, institutional design, and collaboration.



### Introduction

Since the late 1990s, countries in the Arab region have promulgated competition laws to help create dynamic and competitive markets, unlock job creation, and drive sustainable development.<sup>1</sup> The table demonstrates that nearly all Arab countries have enacted competition laws. However, these laws alone are insufficient without adequate implementation,<sup>2</sup> and many LDCs across the region have failed to establish competition authorities to enforce this legislation. The present background paper explores competition authorities’ objectives and potential challenges and proposes strategies for creating effective institutions that are responsive to national contexts.

### Competition laws and agencies across the Arab region

Country	Is there a competition law?	Date of enactment	Competition authority	International Competition Network	Arab Competition Network
Algeria	Yes	1995	Competition Council	✓	✓
Bahrain	Yes	2018	Ministry of Industry, Commerce and Tourism	-	✓
Comoros	Yes	2013	No	-	-
Djibouti	Yes	2008	Yes	-	-
Egypt	Yes	2005	Egyptian Competition Authority	✓	✓
Iraq	Yes	2010	No	-	✓
Jordan	Yes	2004	Competition Directorate – Ministry of Industry and Trade	✓	✓
Kuwait	Yes	2007	Competition Protection Authority	✓	✓
Lebanon	Yes	2022	No	-	✓
Libya	Yes	2010	Yes	-	✓
Mauritania	Yes	2000	Yes	-	-
Morocco	Yes	2000	Competition Council	✓	✓
Oman	Yes	2014	Competition Protection and Monopoly Prevention Centre	✓	✓
Qatar	Yes	2006	Committee for the Protection of Competition and Prevention of Monopolistic Practices – Ministry of Commerce and Industry	✓	✓
Saudi Arabia	Yes	2004	General Authority for Competition	✓	✓
Somalia	No	-	No	-	-

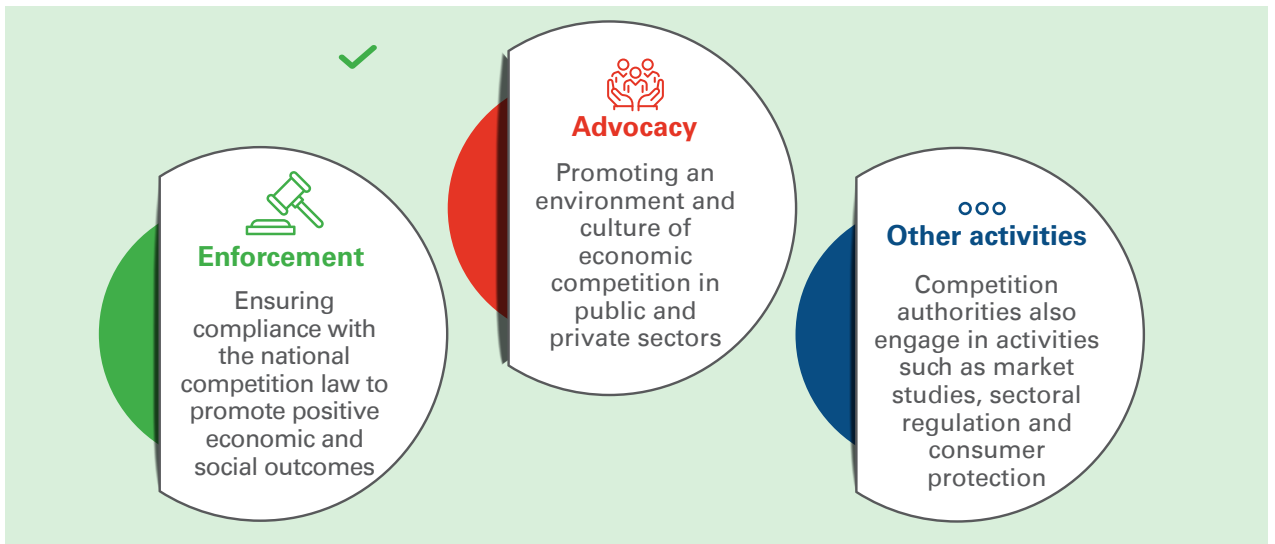
State of Palestine	No	-	No	-	✓
Sudan	Yes	2009	Yes	-	✓
Syrian Arab Republic	Yes	2008	Yes	-	-
Tunisia	Yes	1991	Competition Council	✓	✓
United Arab Emirates	Yes	2012	Competition Department – Ministry of Economy	-	✓
Yemen	Yes	1999	Public Administration to Promote Competition and Prevent Monopoly and Commercial Fraud – Ministry of Industry and Trade	✓	✓

**Source:** ESCWA compilation based on the ESCWA Arab Legislation Portal; [https://www.researchgate.net/publication/353463927\\_Between\\_Stabilization\\_and\\_Allocation\\_in\\_the\\_MENA\\_Region\\_Are\\_Competition\\_Laws\\_Helping/link/60fed7c72bf3553b2912f919/download](https://www.researchgate.net/publication/353463927_Between_Stabilization_and_Allocation_in_the_MENA_Region_Are_Competition_Laws_Helping/link/60fed7c72bf3553b2912f919/download); <https://www.internationalcompetitionnetwork.org/members/>; and [https://www.allenoverly.com/global/-/media/allenoverly/2\\_documents/news\\_and\\_insights/publications/202203/client\\_alert\\_-\\_arab\\_competition\\_network\\_-\\_april\\_2022.pdf](https://www.allenoverly.com/global/-/media/allenoverly/2_documents/news_and_insights/publications/202203/client_alert_-_arab_competition_network_-_april_2022.pdf).



## Objectives of competition authorities

**Figure 1. Objectives and activities of competition authorities**



**Source:** ESCWA compilation based on literature.

### A. Enforcement

As illustrated in figure 1, the fundamental objective of competition authorities is to enforce the national competition law, encouraging the efficient use of resources whilst protecting the freedom of market actors (OECD, 2003).<sup>3</sup> The objective of competition laws can differ across countries, with developing countries often including public

interest clauses such as promoting small and medium enterprises, employment, or socio-political objectives.<sup>4</sup> In Morocco, for example, the competition law promotes both economic efficiency and consumer interest, thus creating different enforcement strategies for the competition authority depending on the prioritised outcome (ESCWA, 2015).<sup>5</sup> For this reason, clarity within the legislation on its desired objectives forms the basis of effective enforcement by competition agencies in developing countries. The report “Arab Business Legislative Frameworks”<sup>6</sup> of ESCWA continues to support member States in this area to either implement or strengthen competition laws in line with international best practices.

## B. Advocacy

Figure 1 also demonstrates the conventional wisdom that a competition agency should engage in more than just enforcement (OECD, 2005).<sup>7</sup> Advocacy refers to activities that promote an environment and culture of economic competition. A paper by the Organization for Economic Cooperation and Development (OECD), entitled “Competition Advocacy: Challenges for Developing Countries”, presents some common examples of advocacy:

1. Provide oversight of the privatization of State-owned enterprises (SOEs) to ensure a competitive outcome.
2. Contribute to the drafting of legislation that might affect competition in the economy.
3. Call for reforms where public procurement policy is inefficient and anti-competitive.
4. Organize conferences and seminars with key stakeholders to help create a culture of competition in local and national contexts.

## C. Other activities

Competition authorities often hold additional responsibilities such as consumer protection or sectoral regulation. Many OECD countries (e.g., Belgium, France, and the United Kingdom) have combined their competition authorities and consumer protection authorities into one unified institution. The relative merits of this decision are discussed by Fels and Ergas (2014),<sup>8</sup> and this is an area of importance for developing countries – especially in the Arab region – where consumer protection is a nascent and vastly underdeveloped field. Meanwhile, other jurisdictions have merged sector regulators with competition authorities (e.g., Estonia and New Zealand). The advantages of such a merger depend on individual circumstances, though it has been suggested that a combined entity can utilise a greater variety of tools, is less susceptible to regulatory capture, and can benefit from operational advantages such as economies of scale (OECD, 2022).<sup>9</sup>



## Challenges in developing and least developed economies

Based on the objectives described above, there are several unique challenges that may arise for competition authorities operating in developing countries and LDCs:

### A. Quality of legislation

The ability of a competition authority to effectively enforce antitrust laws hinges on the quality and clarity of the legislation on which it is founded. For example, 70 per cent of surveyed young competition authorities that have existed for less than 15 years reported that their founding legislation was hindering their enforcement of competition law (ICN, 2019).<sup>10</sup> For example, the legislation underpinning the Barbados Fair Trading Commission did not empower the authority to levy fines on private sector actors; meanwhile, the Indonesian competition authority was not given powers such as search and seize. Legislation-related issues present a likely challenge for competition authorities in the Arab region, as member States have, on average, moderate capacity in competition legislation.<sup>11</sup> This situation is especially challenging for Arab LDCs, which typically have basic capacity in competition legislation, with no law or competition authority in existence.

### B. Resources

The International Competition Network (ICN) notes that nearly all competition authorities may at times express misgivings about their allocation of funds.<sup>12</sup> However, younger agencies in countries that lack fiscal capacity – such as those in LDCs – face significant limitations. Because LDCs have low levels of economic and social capital, the institutional capacity of their competition authorities can suffer. For this reason, the United Nations Conference on Trade and Development has worked on capacity-building and technical assistance, including training officials who handle competition cases and conducting market studies to highlight how competition can drive development.<sup>13</sup>

### C. Political economy

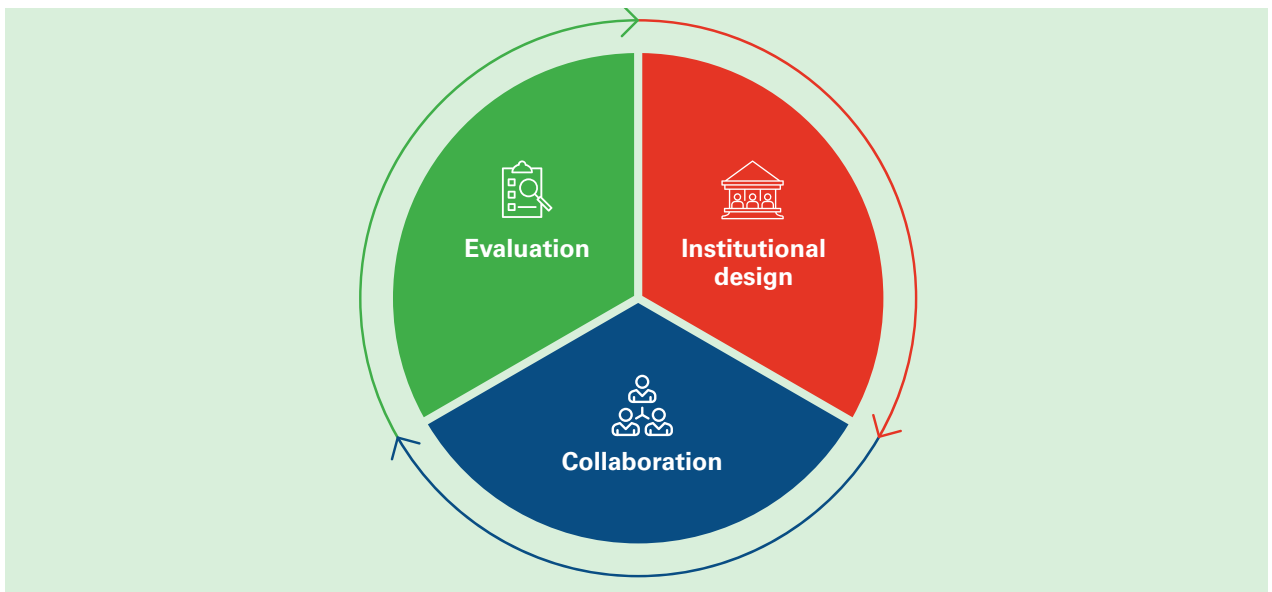
Developing economies have a unique need for competition authorities given the challenges presented by their political economies. In LDCs where markets are less mature, they are more vulnerable to anti-competitive practices,<sup>14</sup> thus requiring intervention from competition authorities to enforce antitrust law. Furthermore, the developing countries of the Arab region are anti-competitive due to the prevalence of SOEs.<sup>15</sup> These organizations are protected from fair competition; for example, SOEs in Djibouti monopolize certain industries (such as telecommunications) and some receive unconditional support from the Government. Competition authorities are, therefore, vitally important to mitigate those practices by engaging in processes such as advocacy and privatization to promote competitive outcomes.



## Approaches to improve efficiency in competition authorities

Policymakers stress that there is no one-size-fits-all approach to creating an efficient competition authority; it is said to be more of an art than science (Jenny, 2016). All competition authorities – but especially young agencies and those in LDCs – must therefore be willing to self-evaluate, adapt their institutional design, and collaborate with other agencies and stakeholders to develop into more efficient bodies.

**Figure 2.** Approaches towards improving the efficiency of competition authorities



Source: ESCWA compilation based on literature.

### A. Evaluation

One of the central challenges of improving the efficiency of competition authorities is to find a holistic and practical measurement of their performance. This is complicated by the differences in competition authorities' objectives described above, as well as by the plurality of institutional arrangements that structure agencies, as discussed below. Whilst there is no standardized approach, it is helpful to consider the relative merits of several key methodologies for assessing a competition authority's performance based on:

- **Case outcomes:** Judging competition authorities by their outcomes (in terms of the number of cases successfully investigated and prosecuted) seems like an instinctive way of judging their efficacy; this is the performance review approach discussed by Kovacic (2009).<sup>16</sup> However, looking at outcomes alone tells us little about the efficiency of a competition authority (e.g., its ability to deploy resources well). Furthermore, focusing on cases alone narrows the scope of authorities to simply enforcing the competition law. It does not capture how the competition authority might be performing advocacy or how its enforcement efforts in individual cases are helping to create a broader culture of competition.
- **Reputation:** A more direct approach is to use perceptions of a competition authority as a proxy to judge its efficiency (Kovacic, 2009). Whilst this approach has merits and

has been applied in previous studies, it can be inapplicable for many developing countries. Young competition authorities may not yet have developed a reputation despite good performance, and in many cases, data relating to reputation are unavailable for authorities in developing countries (for example, the Global Competition Review does not provide enforcement ratings for competition authorities in Arab countries).

- **Peer reviews:** A detailed evaluation of competition policy in a country often includes an evaluation of its competition authorities' performance (Kovacic, 2009). These reviews can illuminate areas of improvement for the authority's efficiency. For instance, the OECD recent review of Tunisia recommended that its Competition Council should strengthen its mandate, increase its resources, and review its internal organization. While these peer reviews do effectively analyse the performance of competition authorities, they are time-intensive and country-specific, and do not provide a clear, standardized metric to capture competition authorities' performance.
- **Best practices:** Competition authorities can be evaluated against a set of criteria that constitute best practices for an agency. For example, Youssef and Zaki (2022) created an index to evaluate the implementation of competition policy in six Arab countries, scoring authorities based on a series of metrics for their enforcement, advocacy, and institutional effectiveness. While this methodology can provide a good overview, there are recognised difficulties in defining a holistic set of criteria. For example, the authors' methodology fails to consider authorities' staff resources, which can significantly impact competition authorities' performance. A fundamental limitation of evaluating agencies against best practices stems from the fact that there is no one-size-fits-all approach to designing an effective competition authority; the ideal institution highly depends on the realities of the national context (Jenny, 2016).

## B. Institutional design

### 1. Independence and governance

The independence of a competition authority is often cited as an important prerequisite to its effective functioning. There are several types of independence: structural independence implies that the authority exists outside of a ministry and is funded directly from parliament or the legislature, while operational independence requires competition authorities to be unaffected by external influences when conducting their activities. It is assumed that those two types of independence shield a competition authority from corruption and/or regulatory capture, ensuring that its decision-making is motivated purely by its legitimate and mandated objectives (Jenny, 2016).

In the Arab region where many countries struggle with corruption, the independence of competition authorities is vital to ensure their legitimacy, credibility, and efficacy (ESCWA, 2015). However, relatively few Arab countries explicitly legislate for the operational independence of their competition authorities, and fewer still ensure that their competition

authorities have complete structural independence. As illustrated in the table, many competition authorities in the Arab region exist as part of a ministry.

While independence is often positive because it may provide better outcomes for enforcing cases, government involvement with the competition authority may help it advocate more strongly to create a competition culture (Jenny, 2016). This creates an important trade-off for countries in the Arab region and other developing countries, which have both a strong need to battle monopolistic practices (enforcement) and a strong need to imbue economies with a culture of competition (advocacy).

## 2. Bifurcated vs administrative model

There is a distinction between two structural models of competition authorities:

- **Bifurcated (or prosecutorial) model:** The competition authority has investigative powers but brings enforcement actions to the judiciary that holds a decision-making power, either in a court of general jurisdiction or a specialised competition adjudicative authority.
- **Administrative model:** The competition authority is empowered with both investigative and adjudicative functions as a first-instance court, with the possibility of appeal either before a court of general jurisdiction or a specialised court.

There are trade-offs for both models, which are relevant for the efficiency of competition authorities in developing countries. The separation of investigation and adjudication in the bifurcated model helps to protect the impartiality of proceedings, and the second perspective on the case from the judiciary helps to mitigate any confirmation bias. However, in favour of the administrative model, it is important to note that courts might not possess the same expertise in competition as the agencies themselves, and competition cases may not be high on the priority list of court proceedings, thus hindering effective enforcement by competition authorities (Jenny, 2016).

## C. Collaboration

Previous sections have highlighted differences in the objectives and structures of competition agencies in developing countries. In view of those differences, collaboration between competition authorities is essential to share different experiences, methods, and lessons that can be learnt from similar circumstances. The ICN serves this function, and the ongoing work of its Agency Effectiveness Working Group seeks to identify the key elements of a well-functioning competition agency.<sup>17</sup> The ICN shares vital information that can help improve the competition authorities of developing countries. For example, its publication “Lessons to be Learnt from the Experience of Young Competition Agencies” (2019) highlights challenges faced in legislation, policy, resources, staff-expertise, the judiciary, and competition culture from 27 jurisdictions worldwide.<sup>18</sup>

Furthermore, the Arab Competition Network (ACN) was launched in March 2022 to drive regional cooperation and harmonisation of competition policy and enforcement.<sup>19</sup> The



ACN is intended to complement the role of the ICN, and the table illustrates Arab countries' memberships to each respective network. Through its working groups, the ACN facilitates the sharing of experiences and knowledge at the regional level on topics such as improving institutional efficiency of competition bodies. Given the shared experiences and political economies of Arab countries (e.g., the prevalence of SOEs), this regional approach can reveal the institutional structures best suited to maximise the efficiency of competition authorities in the region.

Finally, it is essential to consider the role of external stakeholders in directly supporting LDCs to develop effective competition authorities. The Doha Programme of Action for Least Developed Countries for the Decade 2022–2031 represents a commitment from the development partners of LDCs to provide assistance in achieving success in six key focus areas. Article 153 makes explicit reference to assisting LDCs in “building capacities to implement effective competition policies” (United Nations, 2022)<sup>20</sup> in order to promote private sector development. This creates the opportunity for fruitful engagement between LDCs and external partners regarding future support for improving the resources needed to create and maintain effective competition authorities.

## Endnotes

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- 1 The Economic and Social Commission for Western Asia (ESCWA) (2015). Competition and Regulation in the Arab Region. <https://www.unescwa.org/sites/default/files/pubs/pdf/economic-governance-series-2015.pdf>.
- 2 Jala Youssef and Chahir Zaki (2022). A Decade of Competition Laws in Arab Economies: a de jure and de facto assessment. [https://www.researchgate.net/publication/358731216\\_A\\_decade\\_of\\_competition\\_laws\\_in\\_Arab\\_economies\\_a\\_de\\_jure\\_and\\_de\\_facto\\_assessment](https://www.researchgate.net/publication/358731216_A_decade_of_competition_laws_in_Arab_economies_a_de_jure_and_de_facto_assessment).
- 3 The Organization for Economic Cooperation and Development (OECD) (2003). The Objectives of Competition Law and Policy. <https://www.oecd.org/daf/competition/2486329.pdf>.
- 4 Frederic Jenny (2016). The institutional design of Competition Authorities: Debates and Trends. <https://www.europarl.europa.eu/cmsdata/100755/Frederic%20Jenny%20The%20institutional%20design%20of%20Competition%20Authorities.pdf>.
- 5 ESCWA (2015). Competition and Regulation in the Arab Region.
- 6 ESCWA (2021). Arab Business Legislative Frameworks. <https://publications.unescwa.org/projects/ablf/sdgs/pdf/en/2100167--Arab-Business%20Legislative-Frameworks-Main-Report-En.pdf>.
- 7 OECD (2005). Competition Advocacy: Challenges for Developing Countries. <https://doi.org/10.1787/clp-v6-art10-en>.
- 8 Allan Fels and Henry Ergas (2014). Institutional Design of Competition Authorities. [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD\(2014\)85&doclanguage=en](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD(2014)85&doclanguage=en).
- 9 OECD (2022). Interactions between competition authorities and sector regulators. <https://www.oecd.org/competition/interactions-between-competition-authorities-and-sector-regulators.htm>.
- 10 The International Competition Network (ICN) (2019). Lessons to Be Learnt from the Experience of Young Competition Agencies. [https://internationalcompetitionnetwork.org/wp-content/uploads/201906/SGVC\\_YoungerAgenciesReport2019.pdf](https://internationalcompetitionnetwork.org/wp-content/uploads/201906/SGVC_YoungerAgenciesReport2019.pdf).

- 11 ESCWA (2019). Arab Legislation Portal. <https://alp.unescwa.org/>.
- 12 ICN (2019). Lessons to Be Learnt from the Experience of Young Competition Agencies.
- 13 The United Nations Conference on Trade and Development (2009). Review of capacity-building and technical assistance in the area of competition law and policy. [https://unctad.org/system/files/official-document/ciclpd5\\_en.pdf](https://unctad.org/system/files/official-document/ciclpd5_en.pdf).
- 14 International Trade Centre (2012). Combating Anti-competitive Practices: A Guide for Developing Economy Exporters. <https://intracen.org/media/file/12106>.
- 15 The International Monetary Fund (IMF) (2021). State-Owned Enterprises in Middle East, North Africa, and Central Asia: Size, Costs, and Challenges. <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/202117/09//State-Owned-Enterprises-in-Middle-East-North-Africa-and-Central-Asia-Size-Costs-and-464657>.
- 16 William E. Kovacic. (2009). Rating the Competition Agencies: What Constitutes Good Performance? [https://www.ftc.gov/sites/default/files/documents/public\\_statements/rating-competition-agencies-what-constitutes-good-performance/2009rating.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/rating-competition-agencies-what-constitutes-good-performance/2009rating.pdf).
- 17 ICN (2018). Agency Effectiveness Working Group. <https://www.internationalcompetitionnetwork.org/working-groups/agency-effectiveness/>.
- 18 ICN (2019). Lessons to Be Learnt from the Experience of Young Competition Agencies.
- 19 Allen & Overy (2022). Middle East and Africa Competition Authorities launch the Arab Competition Network. <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/middle-east-and-africa-competition-authorities-launch-the-arab-competition-network>.
- 20 United Nations (2022). Doha Programme of Action for the Decade 2022–2031 (DPoA). <https://www.un.org/ldc5/doha-programme-of-action>.

