

Executive Summary

Investigations into a breach of the competition law are initiated either by the Authority itself, by the Minister of Trade and Industry, or by a company that registers a complaint. If an issue or complaint is found to correspond to the competence of the Authority and is under the jurisdiction of the competition law, the executive director of the Authority then selects a small team to investigate the case. The team conducts the investigation by following three key steps:

1. The discreet collection of critical data such as sales volumes, product details, etc;
2. Determination and assessment of the "relevant market" on the basis of two key factors; product relevance, which is decided against the availability of 'like products' that can work as substitutes as well as the consumers' willingness and ability to shift to those products and their availability in the market, and the geographic area in which similar competition conditions for the product(s) in question prevail;
3. A determination of the type of violation according to three main categories. These categories are: Horizontal Agreements, Vertical Agreements, and Abuse of Dominance.

There is a number of criteria to determine the relevant geographic area for potential product competition. These include:

- The ease of the market players to move from one geographic area to the other, as well as the ease of entrance of new market players into other competitive geographic areas to sell like products
- The ease of consumers to move from one geographic area to the other as a result of the relative changes in prices or any other competitive factors
- Though there is no clear-cut period, in practice a time span of 1 to 2 years is considered realistic, within which one can envisage the surfacing of real or potential future threat. New entrants would pose less of a threat if a longer period of time is taken into account.
- Different domestic laws, legal barriers, such as tariffs and non-tariff barriers, as well as transportation costs between geographic areas can also affect potential competition between them.

While the preceding steps are rigorously followed, all complaints are dealt with on a case-by-case basis as is highlighted in the full report. Whereas the ECA has to consider the rule of reason in vertical agreements to decide on the right balance between restricting competition and the harm done to consumers, and has to prove abuse in the case of dominance, horizontal agreements are more of violation cases in their own right. Nevertheless, as criminal cases, all violations require hard evidence to pursue prosecution and convince the court.