Exclusivity in Distribution and Agency Arrangements in Egypt

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Egypt | Exclusivity in Distribution and Agency Arrangements
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Egypt, unlike other Middle Eastern jurisdictions, does not treat exclusivity in dealership arrangements as a statutory default. Exclusivity is generally permissible in dealership and distribution agreements under Egyptian law; however, it arises only by agreement between the parties, not by operation of law.

Commercial agencies in Egypt are governed by the Egyptian Commercial Agency Law, which is neutral on exclusivity. Distribution agreements, unlike agency agreements, are not governed by a dedicated statute. Instead, they fall under the general provisions of the Egyptian Civil Code and the Egyptian Commercial Code.

For both commercial agents and distributors, exclusivity is purely a matter of contract. Parties are generally free to agree on exclusive territories, customer groups, product lines, purchasing obligations, or non-compete provisions. Still, they are subject only to mandatory provisions of Egyptian law including the limits imposed by Egyptian competition regulation.

Since exclusivity is not mandated by statute, it falls within the scope of review by the Egyptian Competition Authority (ECA) under the Egyptian Competition Law and the 2024 ECA Guidelines on the Assessment of Vertical Agreements. The Guidelines provide the framework for assessing exclusivity in dealership arrangements and confirm that exclusive distribution and supply agreements are common and generally permissible in Egypt. They also recognize that, in certain circumstances, these agreements may restrict competition and therefore are not exempt from scrutiny.

The ECA states in the Guidelines that it will assess whether an exclusive distributorship restricts competition under the Egyptian Competition Law by reference to:

- the market share of the supplier in the upstream market;
- the market share of the distributor or retailer in the downstream market;
- whether the exclusivity operates at the wholesale or retail level, with retail-level exclusivity treated as more likely to harm competition; and
- whether the exclusivity is compounded by additional restraints on the distributor, particularly resale price maintenance or a prohibition on distributing competing brands.

The Guidelines also flag related vertical constraints that frequently accompany exclusive dealership arrangements and that the ECA will weigh cumulatively with exclusivity. These include restrictions on passive sales, meaning sales to customers outside a distributor's allocated territory that the distributor did not actively solicit. The ECA treats these with particular caution because they can foreclose the parallel imports that would otherwise generate intra-brand competition. They also include most-favored-nation clauses.

Selective distribution systems are treated more favorably where the criteria for establishing exclusivity are objective, transparent, and genuinely directed at product quality or technical standards rather than at limiting the number of competing outlets. Hence, the Egyptian Competition Law does not prohibit exclusivity as such. Exclusive dealership arrangements are assessed based on their competitive effects. The law recognizes that exclusive territories, customer allocations, purchasing obligations, and non-compete clauses may encourage distributors to invest in marketing, sales infrastructure, customer service, technical support, and after-sales service. This investment can strengthen inter-brand competition and benefit consumers. At the same time, these arrangements may raise competition concerns by blocking competitors from accessing distribution channels or customers, or by reinforcing market power.

Competition concerns become more serious where exclusivity forms part of conduct that amounts to an abuse of dominance. A business holding a dominant position with a market share exceeding 25% and the ability to influence prices or supply without facing effective competition may not engage in conduct that prevents, restricts, or harms competition. Depending on the circumstances, exclusive purchasing obligations, exclusive supply arrangements, long-term exclusivity provisions, or restrictions preventing distributors from carrying competing products may constitute abusive conduct where they significantly block competitors from accessing the market without objective justification.

The ECA applied this standard in a May 2022 decision against an online food-delivery platform, finding that exclusivity clauses imposed by a dominant operator restricted competition. The dominant operator required partner restaurants not to deal with competing platforms, and the ECA held that this created barriers to entry and expansion for rival platforms, strengthened the operator's market power, and ultimately harmed consumers by reducing choice and price competition. This was treated as an abuse of dominance and as conduct that limits access to the market.

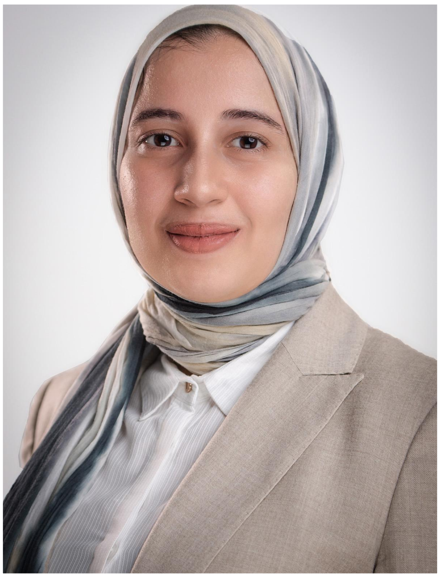
Consistent with this statutory framework, the ECA has adopted an effects-based approach to exclusive distribution arrangements. It does not treat exclusivity as inherently unlawful. In its enforcement practice, merger reviews, and the 2024 Vertical Agreements Guidelines, the ECA has acknowledged that exclusive dealership arrangements often generate legitimate commercial efficiencies. At the same time, the ECA has indicated that exclusivity may raise competition concerns where it blocks competing suppliers or distributors, partitions markets, or strengthens the market position of dominant businesses. The ECA applied this approach in a 2018 decision against Apple's Egyptian distribution structure, finding that exclusive distribution arrangements preventing parallel imports restricted competition.

Key takeaways

The legality of exclusivity under Egyptian competition law depends on the parties' market power and the arrangement's competitive effects. It does not depend on the existence of exclusivity itself. Where neither party holds a dominant market position and the arrangement does not materially restrict competition, exclusive dealership agreements are unlikely to attract enforcement.

Conversely, where a dominant business imposes exclusivity and substantially limits competitors' access to customers, distribution channels, or other essential routes to market, the arrangement may be investigated as a potential abuse of dominance.

Businesses entering into exclusive dealership arrangements in Egypt should carefully assess market shares, the duration and scope of exclusivity, barriers to market entry, and the availability of alternative distribution channels. Exclusive dealership arrangements should remain proportionate, commercially justified, and unlikely to produce significant anti-competitive effects. This is particularly important where one party holds substantial market power.



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