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This article seeks to contribute to the debate among scholars, institutions and practitioners on whether a separation between the prosecutorial and the adjudicative functions, which are now both held by the Commission, could entail a fairer and more efficient enforcement of art.101 TFEU in cartel cases. In the first part, after outlining how the procedure works, this article fleshes out what the main criticisms are and what the ECHR's case law states on the issue of whether competition law falls within the realm of criminal law. It then argues that as regards the amount of the fines and the judicial review the current enforcement system can be deemed fair. Nonetheless, although the EU accession to the ECHR would not require any separation of powers, it is argued that some fairness concerns remain, especially as regards the procedures within the Commission. In the second part, this article addresses the issue of efficiency. It is argued that a prosecutorial model could entail more efficiency due to the fact that the Commission will put itself into a situation of no return and that the length of the proceedings, both before the Courts and within the Commission's internal debate, together with the risk of bias, could be drastically reduced.

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State compulsion was developed by the Egyptian Competition Authority’s practice under the Law number 3 of 2005 on the Protection of Competition and the Prohibition of Monopolistic Practices (ECL), stemming from the fact that contracts or agreements presuppose that their parties concluded them wilfully. However, considering the ECA’s decisions it will be revealed that there are two main enforcement policies. The first is where the ECA interprets state compulsion broadly and hence it refrains from inspecting any market where there is any sort of governmental presence. The second is where the ECA applies the state compulsion defence, narrowly bringing its enforcement policy in line with that of the European Union where it decided in a number of cases that monitoring, sponsoring, or approving anti-competitive conduct are not seen as valid defences by infringers to escape the enforcement of the ECL. It is argued that this narrow interpretation of the state compulsion defence seems likely to become the prevalent enforcement policy. This is because it is supported by a decision by the Court of Appeal ensuring that the ECA has the jurisdiction to intervene in any market, enabling it to apply the ECL without being obstructed by governmental actions.

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