THE ALGERIAN COMPETITION COUNCIL: A DE FACTO JURISDICTION

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ABSTRACT

Objective: The aim of this study is precisely to show and/or demonstrate the quasi-judicial character of the competition council, as a fully independent authority with all that it implies, particularly in terms of dealing with anti-competitive and/or restrictive practices of competition.

Method: To address the issue stated in this study, it seemed necessary to opt for an analytical research approach on all legal texts surrounding the relevance of the theme, and whenever necessary, to partially shift towards a comparative study between Algerian law (domestic law) and French law, notably to highlight certain similarities and/or specificities.

Result: The Algerian Competition Council is an autonomous administrative authority that acts on behalf and for the account of the State to enforce competition rules. It has legal personality and financial autonomy. It is placed under the Minister responsible for trade without being under their supervision. This all serves to confirm its absolute independence. Indeed, this authority is endowed with the power of sanction, with all that implies. Therefore, unquestionably, the Competition Council (without going through a competent jurisdiction de jure) sanctions restrictive or anti-competitive practices and settles disputes in this regard. In this context, the competition authority appears as an economic judiciary, distinguished by its own means, especially quasi-judicial ones: since the ability to impose sanctions, this imperium certainly gives it the character of a judiciary, or even a de facto jurisdiction: both in its form (referring to Delegating Jurisdiction to the Competition Council), and also in its content (referring to the "quasi-judicial" procedural process of administrative enforcement).

Keywords: Competition Council, Authority, Jurisdiction, Independence, Competence, Process, Sanction.

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CONSELHO DA CONCORRÊNCIA ARGELINO: COMPETÊNCIA DE FATO

RESUMO

Objetivo: O objetivo deste estudo é precisamente demonstrar e/ou demonstrar o caráter quase judicial do Conselho da Concorrência, como autoridade totalmente independente com tudo o que ele implica, particularmente em termos de lidar com práticas anticoncorrenciais e/ou restritivas da concorrência.

Método: Para abordar a questão apresentada neste estudo, pareceu necessário optar por uma abordagem de pesquisa analítica sobre todos os textos jurídicos que cercam a relevância do tema e, sempre que necessário, mudar parcialmente para um estudo comparativo entre o direito argelino (direito interno) e o direito francês, nomeadamente para destacar certas semelhanças e/ou especificidades.

Resultado: O Conselho Argelino da Concorrência é uma autoridade administrativa autônoma que atua em nome e por conta do Estado para fazer cumprir as regras da concorrência. Tem personalidade jurídica e autonomia financeira. É colocado sob a alcada do Ministro responsável pelo comércio, sem estar sob a sua supervisão. Tudo isto serve para confirmar a sua absoluta independência. De fato, esta autoridade é dotada do poder de sancionar, com tudo o que isso implica. Por conseguinte, é inquestionável que o Conselho da Concorrência (sem passar por uma jurisdição competente de jure) sanciona práticas restritivas ou anticoncorrenciais e resolve litígios a este respeito. Neste contexto, a autoridade da concorrência aparece como um poder judiciário econômico, distinguido por seus próprios meios, especialmente os quase-judiciais: uma vez que a capacidade de impor sanções, este imperium certamente lhe dá o caráter de um poder judiciário, ou mesmo uma jurisdição de fato: tanto em sua forma (referindo-se à Delegação de Jurisdição para o Conselho da Concorrência), e também em seu conteúdo (referindo-se ao processo processual "quase-judicial" de execução administrativa).

Palavras-chave: Conselho de Concorrência, Autoridade, Jurisdição, Independência, Competência, Processo, Sanção.

EL CONSEJO ARGELINO DE COMPETENCIA: UNA JURISDICCIÓN DE FACTO

RESUMEN

Objetivo: El objetivo de este estudio es precisamente mostrar y/o demostrar el carácter cuasi-judicial del Consejo de Competencia, como una autoridad totalmente independiente con todo lo que implica, particularmente en términos de hacer frente a las prácticas anticompetitivas y/o restrictivas de la competencia.

Método: Para abordar la cuestión planteada en este estudio, parecía necesario optar por un enfoque de investigación analítica sobre todos los textos legales que rodean la relevancia del tema, y siempre que sea necesario, desplazarse parcialmente hacia un estudio comparativo entre el derecho argelino (derecho interno) y el derecho francés, en particular para destacar ciertas similitudes y/o especificidades.

Resultado: El Consejo Argelino de la Competencia es una autoridad administrativa autónoma que actúa en nombre y por cuenta del Estado para hacer cumplir las normas de competencia. Tiene personalidad jurídica y autonomía financiera. Se coloca bajo el Ministro responsable del comercio sin estar bajo su supervisión. Todo esto sirve para confirmar su absoluta independencia. De hecho, esta autoridad está dotada con el poder de la sanción, con todo lo que implica. Por lo tanto, es inuestionable que el Consejo de Competencia (sin pasar por una jurisdicción competente de jure) sanciona las prácticas restrictivas o anticompetitivas y resuelve las disputas a este respecto. En este contexto, la autoridad de competencia aparece como un poder judicial económico, distinguido por sus propios medios, especialmente los cuasi
judiciales: dado que la capacidad de imponer sanciones, este imperium ciertamente le confiere el carácter de un poder judicial, o incluso una jurisdicción de facto: tanto en su forma (refiriéndose a la jurisdicción delegada al Consejo de Competencia), como también en su contenido (refiriéndose al proceso procesal "quasi judicial" de ejecución administrativa).

**Palabras clave:** Consejo de Competencia, Autoridad, Jurisdicción, Independencia, Competencia, Proceso, Sanción.

1 INTRODUCTION

The Algerian Competition Council is an autonomous administrative authority that acts on behalf and for the account of the State to enforce competition rules. It has legal personality and financial autonomy. It is placed under the authority of the minister responsible for commerce.

However, the competition council is not under the supervision of the Ministry of Commerce.

In fact, the Algerian Competition Council, as an independent authority, appears as an economic judiciary (1), which is distinguished primarily by its quasi-jurisdictional means. Indeed, the ability to impose sanctions gives it undoubtedly the character of a "judiciary". Furthermore, this same judiciary is a creator of norms constituting a real right of exchange, which will potentially be the basis of competition regulation.

The intervention of the Competition Council in resolving disputes related to restrictive competition practices has long been a subject of wide debate regarding the withdrawal of jurisdiction from judicial bodies and its transfer and/or empowerment exclusively to an independent public authority. How can the latter administratively (and perhaps quasi-judicially) address these practices? We chose to divide this study into two parts: Delegating Jurisdiction to the Competition Council: The container (I), and then we delve into the various procedural stages of administrative proceedings, or in other words, we dedicated it to The "quasi-judicial" procedural process of administrative enforcement: The content (II).
2 DELEGATING JURISDICTION TO THE COMPETITION COUNCIL: THE CONTAINER

Referring to the original text of the Competition Council under Order No. 95/06 (revoked) (2), we find that the Algerian legislator did not address the legal nature of this new body. Instead, it merely stated that it "enjoys independent legal and financial personality." (3)

However, the question of the legal nature of the Competition Council requires an examination of whether it is considered a judicial body given its operating rules, which the legislator established to limit what the courts could do in enforcing the rules related to commercial practices under Law No. 89/12 concerning prices (4).

Alternatively, does the legislator view it as an administrative body or an independent administrative authority falling within the new institutions forming part of the state apparatus, introduced since the early 1990s as part of the economic reforms adopted by Algeria, particularly towards a market economy? This was further solidified by Ordinance No. 03/03 concerning competition, amended and supplemented by Law 08-12, explicitly (5), this also includes its internal regulations (6).

Regarding the composition of the Competition Council, it can be divided into two categories: the first includes the members, numbering 12, divided into three categories based on the legal requirements, appointed by presidential decree, including the president and vice president (7).

The second category pertains to the Secretary-General of the Council, the General Rapporteur, and 5 rapporteurs, also appointed by presidential decree, as well as a permanent representative of the Minister responsible for commerce and their alternate representative, appointed by ministerial decision. Although they participate in the Council's proceedings, they do not have voting rights (8).

The Competition Council intervenes in all disputes related to competition and has the authority to decide on matters in accordance with the law whenever the practices or acts brought before it fall within the scope of the application of Articles 6 to 12 of the competition order.

Through these recognized primary tasks of the Council, which aim to achieve greater transparency in the field of restricted competition practices, especially those related to prohibited agreements and abuses of dominance, the legislator intended to make
the Council the primary regulator of competition and the official expert in the field of competition, given the limitations demonstrated by the judiciary's authority in these technical areas, while criminal justice has shown delays.

The principle of "decriminalization" allows the Competition Council to intervene in areas that cannot be regulated through traditional channels, thus adopting the idea of the repressive authority of the Competition Council in the economic field.

Therefore, the jurisdictional powers of the Competition Council were defined by the legislator within the framework of restricted competition practices, as stated in Article 44 of the competition law.

However, not all matters related to restricted competition practices fall within the jurisdiction of the Competition Council. Although they fall within the scope of the application of Articles 6 to 12, some cases fall outside the Competition Council's jurisdiction, leading us to the boundaries of its jurisdiction.

On the other hand, the French legislator established the Competition Authority under Law No. 776-2008 dated August 4, 2008 (9), replacing the Competition Council established by the ordinance dated 12/01/1986 (10), which was regulated in 2000 in Book IV of the French Commercial Code. It's worth noting that the same council succeeded the Competition Committee established in 1977 (11), which in turn succeeded the Technical Committee for Agreements and Dominance Situations established in 1963 (12).

The Algerian legislator agrees with the French one that the Competition Authority is an independent administrative authority, performing its duties in the name of the state without being subject to the government.

The French Competition Authority is legally competent to enforce French national legislation, specifically Book IV of the French Commercial Code, as well as European legislation, specifically Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), formerly Articles 81 and 82 of the Treaty establishing the European Community (EC).

It consists of a collegial body of 17 members appointed for a term of 5 years by decree following a report from the Minister responsible for the economy (13). The composition includes a president and a group of members, or a college of 16 members, divided into 3 categories, among whom 4 are appointed as vice-presidents, all of whom must meet the legal requirements (14).
After restricted competition practices in Algeria (as in France) were under the jurisdiction of criminal courts (15), Order 95-06 concerning competition, issued after Law 89-12 was repealed under Article 97, entrusted the Competition Council with jurisdiction over abuses of dominance, like other restricted competition practices, while retaining the jurisdiction of criminal judges regarding the personal liability of natural persons (16).

After Order 03-03 concerning competition, which repealed Order 95-06, was issued, the Competition Council became fully responsible for monitoring restricted competition practices, including the personal liability of natural persons, as mentioned above.

In France, a similar transition occurred, where abuses of dominance, like other restricted competition practices, were initially classified as minor offenses punishable under Article 419 of the French Penal Code with imprisonment from two months to two years and fines from 7,200 to 360,000 French francs (17).

The authority to impose financial penalties was initially vested in the Minister responsible for the economy and could not be exercised initially unless the Competition Committee so decided. The Committee itself was limited to respecting the maximum penalties set out in Article 53 of Order 30/06/1945 concerning prices, capped at 5% of the value of the business conducted in France during the most recent practice, with a maximum of 5,000,000 French francs for corporations and 500,000 French francs for individuals (18). This raised the issue of cumulative penalties (criminal and civil). However, with the issuance of Order 01 December 1986 concerning price freedom and competition, the previous legislation was repealed. Therefore, Article 419-2 of the Penal Code was repealed, and the general principle of "decriminalization" was adopted, making prohibited agreements and abuses of dominant position civil violations, which entail civil liability for their perpetrators (19).

Initially, the December 01, 1986, Ordinance was limited to administrative penalties for suppressing abuses of dominance (20). The same order replaced the Competition Committee with the Competition Council responsible for investigation, and later with the court as the first instance for companies regarding legal entities, while maintaining the offense for the managers or creators of the prohibited practice within the criminal framework (21).

The jurisdiction of the criminal court in this area is subject to the Competition Council's declaration of the practices concerned.
Whether in Algeria or France, monitoring abuses of dominance, like other restricted competition practices, has become the responsibility of the Competition Council, with reservations regarding the offense of a natural person's contribution personally to preparing or implementing an abuse. Unlike the Algerian legislator, the French legislator has retained this jurisdiction for criminal judges.

It is worth noting that the French legislator replaced the Competition Council with the "Competition Authority" on January 13, 2009, under the Law on Economic Modernization, which granted it extensive powers compared to the council (22).

Furthermore, the New Economic Regulations Act issued on March 15, 2001, enhanced the Competition Council's powers in combating restricted competition practices (23). Regarding the competition dispute itself.

3 THE "QUASI-JUDICIAL" PROCEDURAL PROCESS OF ADMINISTRATIVE ENFORCEMENT: THE CONTENT

The overall legal procedures followed at the level of the Competition Council are as follows:

3.1 NOTIFICATION

The notification is submitted by legally qualified individuals to the Competition Council according to the legal formalities imposed, which require written notification in a comprehensive form, providing all the required data, as well as the subject matter, legal provisions, and regulations related to the alleged prohibited act, accompanied by evidence elements. The notification is either directly deposited with the Council's procedural department or sent to the Council in a registered envelope with a receipt notice (24).

While French law adopts that notification can be verbal as soon as it is made before the Council's procedural office with the submission of documentary evidence in four copies. The notifying entity is required to mention its business number for the last 03 years in its notification. Additionally, the procedural department of the Competition Council must provide a copy of each notification submitted to it to the government prefect, except for notifications received from the Minister of Economy (25).

Legally qualified individuals for notification:
Legally, these are limited to: the Minister responsible for trade, the Competition Council itself (automatic notification), local authorities, economic and financial entities, institutions, professional and union associations, and consumer associations (26).

We only talk about contentious notifications if they originate from the aforementioned individuals and if their subject is an alleged abuse resulting from dominance and other practices restricting competition.

There is no difference regarding these individuals between national and French law (27), except concerning agricultural, craft, trade, and industry chambers, as Algerian law did not refer to them in the amended Competition Law 03-03 (28). It should also be noted that French law has added the mayor concerning his powers in commercial urban planning in case of abuse resulting from dominance concerning a commercial establishment or establishments (by piece or retail) (29).

It is worth noting that the amended and complementary Order 03-03 did not specify the period within which the Competition Council is supposed to respond to the submitted notifications (30).

Effects of notification:

Submitting a notification results in either its acceptance or rejection.

First: Acceptance of notification. For the Competition Council to consider accepting or rejecting the notification, it must examine the necessary conditions inherent in the notification itself.

We find that both Algerian and French legislation are based on two basic conditions: that the notification falls within the jurisdiction of the Council and that it is supported by convincing evidence (31).

As for the jurisdiction of the Competition Council, it is based on two main criteria: that the facts presented to it are not related to the scope of the competition law application or do not fall within the Council's mandate (32).

It is worth noting that Algerian legislation excluded referring cases to the Competition Council if the suspicious facts have expired after three years from the date of their occurrence without any legal action being taken against them (33). French legislation adopted the same approach in the Competition Law of 1986, especially in its Article 27 (34).

French judicial jurisprudence has determined the nature of the procedures that may interrupt the relevant period, including investigation reports conducted by
investigators regardless of their subject matter, whether examining facts or seizing documents, a letter addressed by the head of the regional competition department for consumer protection and anti-counterfeiting, representing the start of administrative investigation, complaints filed with criminal judicial authorities, including those filed before the issuance of the order dated 01/12/1986 when they concern facts notified to the Competition Council thereafter (35).

The Paris Court of Appeal adopted that the interruption of the limitation period could be achieved by notifying the Competition Council (36).

As for convincing evidence, supported by the notification (37): The documents attached to the notification must support the claimant's allegations, in addition to the existence of the interest, capacity, and eligibility of the latter, in line with the principles of criminal procedure law. In addition to the mentioned interest in Article 44/1 of Order 03-03 concerning the entities mentioned in Article 35/02 of the same law, which also refers to institutions despite not being mentioned literally, institutions must prove the damage caused to their interests by the abuse resulting from dominance as a restricted competition practice, thus, the damage becomes personal and direct as it is in criminal procedure law. Capacity and eligibility are essential, as they must be present in the claimant, whether a natural or legal person. The notification is supposed to be signed by a person authorized by law to do so through the internal regulations of institutions, associations, etc., who has legal status. When we talk about the sufficiency of convincing evidence, we do not mean the negative role of the Competition Council in investigating the facts raised and its satisfaction with the supported notification but rather the purpose lies in simply relieving the Competition Council from getting involved in matters not supported by evidence, thus, prioritizing the main issues for which the Council was established as a regulatory authority for the market.

In contrast, if the Competition Council finds the notification deficient in meeting one of the above-mentioned formal or substantive conditions, it will reject the notification by reasoned decision without adopting a specific form for it.

On the other hand, French legislation adopts the principle of formality, meaning that a decision of non-acceptance cannot be taken except after a formal discussion (38).

The President of the Competition Council can also set deadlines for the submission of memoranda, documents, or comments from interested parties or from the government prefect (39).
The reasoned decision regarding non-acceptance of the notification is made during a council session during which the rapporteur presents verbal comments, and it is not obligatory to precede it with a written report (40).

Regarding the justification nature, it is sufficient for it to be general. The acceptance of the notification by the Council results in immediate and future effects.

As for the immediate effects, they can manifest in:

Taking temporary precautionary measures: This is done in response to a request from the claimant or the Minister responsible for trade, who is involved in the notification’s subject, which the Council addresses during the investigation it conducts. The request is particularly justified concerning its urgent nature, given the nature of the resulting or potential harm that cannot be remedied for institutions or the general economic interest and its causal relationship with the prohibited dominance practice (41).

Informing the sectoral supervisory authority, such as the Postal and Telecommunications Regulatory Authority: As this independent authority is legally responsible for activities related to wired and wireless communications, it falls within its jurisdiction (42). When a case is raised before the Competition Council concerning a sector that falls within the jurisdiction of a specific regulatory authority, such as the field of communications or wired and wireless communications, it sends a copy of the file submitted to it to the relevant regulatory authority to express its opinion within a maximum period of 30 days (43).

Considering that sectoral supervisory authorities, depending on the sector they are responsible for, have the authority to settle disputes in cases that may create real problems in the competition field, especially concerning the risk of contradicting decisions between the Competition Council and the supervisory authority. Therefore, the legislator sought to create those pathways through consultation procedures and mutual opinions to avoid contradictory decisions.

3.2 INVESTIGATION

It comes as a necessary step immediately after accepting the notification as a necessary result thereof (44). It is one of the most important tasks within the jurisdiction of the Competition Council. Its purpose is to ascertain the facts of suspicious incidents
attributed to the defendants. The council has broad powers in this regard. According to Algerian legislation, the President of the Competition Council has the initiative to conduct inquiries. He may appoint a rapporteur to carry out this procedure or request the competent authorities responsible for economic investigations to conduct any monitoring or expertise in accordance with the internal regulations of the Competition Council.

The Algerian legislator also allowed the Competition Council to seek the assistance of any expert and to listen to anyone who can provide information. It can also request an investigation into the matter in dispute from the authorities responsible for economic investigations, especially those under the Ministry responsible for trade.

Similarly, the French legislator has granted extensive powers to the competition authority through various means. It is also possible to enlist local investigators under the supervision of the Minister responsible for the economy to conduct extensive investigations. Additionally, the General Rapporteur may request the services of experts at any time if requested by the rapporteurs (45).

In general, the General Rapporteur coordinates, monitors, and supervises the work of the rapporteurs regarding investigations into cases related to restrictive competition practices, especially abuses resulting from dominant positions. It is worth noting that if the suspicious practice is related to the telecommunications sector, it must be monitored by the authority regulating postal and wired and wireless communications, which is responsible for this activity, in coordination with the latter's services.

As previously mentioned, the Council's powers through the rapporteur during the investigation are extensive, particularly in maintaining professional secrecy by accessing any document that may assist in completing the investigation. Furthermore, any document in this regard can be seized until the investigation is completed, in addition to requesting all necessary information from any institution or individual within a specified deadline (46).

Also, the authority to hear parties by adopting, when necessary, hearing minutes signed by the individuals who have been heard, with the possibility of using their advisors. In case of refusal to sign, it shall be recorded in the same minutes.

French jurisprudence has adopted that the hearings and presentations completed by the rapporteur during the initial investigation phase, before notifying the parties concerned, are not subject to formal rules (such as recording hearing minutes and using advisors), as the latter only applies to hearings held after notifying the parties (47).
It is worth noting that the Algerian legislator did not address what is commonly referred to as "extensive investigations," whereby the rapporteur or investigator generally enters premises, inspects cabinets, and searches for personal documents. Due to the extent of infringement on individual liberties, it has been subjected to judicial oversight.

Unlike the Algerian legislator, the French legislator has stipulated those investigations conducted under judicial oversight regarding restrictive competition practices, especially abuses resulting from dominant positions, in Article 48 of the decree issued on December 1, 1986, concerning price freedom and competition (which became L.450-4 of the French Commercial Code after cancellation). Therefore, "extensive investigations" can only be conducted with authorization and under judicial supervision. Moreover, the decision granting judicial authorization can be challenged within 5 days without suspending its execution (48).

As for oversight, it is manifested in appointing and assigning one or more judicial officers to attend such operations and inform the judge of their progress. Additionally, the judge may, at any moment, order the suspension or termination of the inspection or personally visit the premises. Also, guarantees related to not commencing the visit before 6:00 a.m. or after 9:00 p.m. and in the presence of the premises’ occupant are ensured (49).

Normal Investigations and Extensive Investigations:

To distinguish between normal investigations and extensive ones, it suffices to point out the following:

Normal Investigations: Here, it concerns the right of access, stemming from the French legislator in Article L 450-3 of the Trade Law: Investigators can enter premises, lands, professional transport means, request access to books, invoices, or any other professional documents, and obtain copies thereof. They can also obtain information or justifications either on-site or through summons. Specifically regarding the right of access, investigators are not authorized to conduct inspections or searches, as this falls within the scope of extensive investigations. However, questions may arise regarding access to agendas or computer files containing correspondence, especially with the media, considering that investigators will select what is professionally relevant.

Extensive Investigations: Here, it concerns seizures and attachments, as addressed in Article L 450-4 of the French Trade Law, referring to visits and attachments granted by the liberty and detention judge within the jurisdiction of the places to be visited (50).
These are conducted in the presence of a judicial police officer or the judge and can occur in all places, even private ones. Before issuing an order, the judge must consider certain formalities, such as ensuring that the request for investigation is submitted by the European Communities Committee, the Minister responsible for the economy, or the General Rapporteur of the Competition Authority upon recommendation by the rapporteur. The judge ensures that they have the authority to make such a request, in addition to documenting all necessary information provided by the claimant to support their request. The judge's order must specify the subject of the investigation, the officials executing the procedures, the head of the department appointing the judicial police officers attending these operations. If the places fall outside the judge's jurisdiction, the latter delegates a rogatory commission under the supervision of the judge within whose jurisdiction the place to be visited falls.

In case of dispute over the legitimacy of these operations, recourse is made to the judge who issued the investigation order, not the judge who executed it or was requested to do so (51).

According to the legal procedures adopted by the Algerian Competition Council, the rapporteur prepares an initial report containing the facts and recorded objections, which is communicated by the Council President to the concerned parties, the Minister responsible for trade, and all interested parties who have the right to submit their written comments within a maximum period of 3 months (52).

It is noteworthy that the Competition Council may adopt an unconventional approach by negotiating with institutions engaged in restrictive competition practices. Negotiation here refers to penalties that these guilty institutions may face. Under specific legal conditions, they can request the withdrawal of all or part of the penalty through alternative or optional procedures, known as negotiation procedures. It is noted that the Algerian legislator has adopted some of these procedures, especially non-opposition to objections and also the "European" treatment but has overlooked other aspects. Considering its French counterpart, which has adopted a simplified procedure similar to the procedures adopted by the United States or the European Commission, it has introduced measures that facilitate evidence collection and expedite the processing of some cases related to restrictive competition practices, particularly mercy procedures, non-opposition to claims, and voluntary commitments. However, it has not included the "European" treatment or amicable settlement.
As for the investigations adopted by European law:

Investigations aimed at uncovering anticompetitive practices differ according to the legal framework, whether internal (for a member state of the European Union) or European. The effectiveness of the latter sometimes relies on resorting to national authorities.

The European Commission relies on designated investigators to collect all necessary information, under the auspices of the governments and competent authorities of the member states, in addition to institutions and associations of institutions. The investigation style manifests in three types:

A. Information Requests: According to Article 18 of Regulation No. 1/2003, this takes the form of a letter or decision reaching the legal basis, specifying the purpose, deadline for response (usually 4 weeks), and penalties in case of providing false information, which are more severe, reaching up to 5% of the concerned institutions' daily turnover. A distinction is made between ordinary information requests and decisions regarding information requests. The institution is not obliged to respond to an information request; if it chooses to respond, it must provide accurate information to avoid penalties. However, if it is a decision regarding an information request, the institution is obliged to respond.

B. Inspections: If the European Commission fears that an information request may take too long, during which documents related to the case may be destroyed or hidden, it may resort to inspections (53). The subject of the review must be mentioned. Officers visit the premises of institutions to inspect books and professional documents, take copies, and request oral explanations. The Commission’s investigative authority extends to the residences of institution presidents, managers, and other members employed in the institutions or association of institutions, as per Article 21-1 of Regulation No. 1/2003. Before conducting these inspections, the European Commission must inform the national competition authorities of the concerned member states, and it may issue licenses or permits if national law requires, such as the case for French judges granting permission to inspect residences. If the judge deems the information provided by the Commission insufficient, they do not reject the request outright but inform the Commission to provide further clarification within a reasonable time frame due to the judge's legal duty of cooperation (54).
There are two types of inspections: ordinary inspections, where the Commission assigns its officers (either European or from the concerned member state) to perform the inspection with the institution's voluntary cooperation, and compulsory inspections, which are more forceful and result from a decision of the Commission, involving mandatory enforcement against the concerned institutions.

3.3 TRANSLATION

Despite the fact that this procedure was prevalent before Regulation 2003-01, the latter has maintained it, and Article 19 confirms the necessity of obtaining the person's consent before questioning them.

3.4 SESSION

As a natural and inevitable consequence of the previous stages, decisions are made regarding the issues presented to the council, especially those related to abusive practices resulting from a dominant position. These decisions are governed by the principle of confidentiality as a general rule (55).

The wisdom behind not adopting a public session rule may conflict with another fundamental rule, namely the "business secrecy" rule. To ensure the necessary transparency of its activities, the council must submit an annual report on its activities to the legislative body, the Prime Minister, and the Minister responsible for commerce. This report is announced a month after they are notified and published in the official gazette, as well as in any other media outlet.

Regarding the organization and conduct of sessions: the president of the council is responsible for determining and scheduling all the issues. Accordingly, an agenda accompanied by a summons is sent at least three weeks before the date of the relevant session to the council members, interested parties, relevant rapporteurs, and the representative of the Minister responsible for commerce. The latter two do not have voting rights, and the session proceeds according to the legal procedures regulating the council (56).

It is worth mentioning the guarantees for the involved parties, especially their right to attend after being summoned within a period of no less than three weeks from the date
of the session, for the purpose of reviewing the files concerning them. Not to mention their right to seek assistance from a defender, with absolute freedom to choose whether it be a lawyer or any other person.

In addition to the right to ensure the confidentiality of their affairs, we find that the French legislator, in the decree issued on November 13, 2008, amended the system related to their protection in order to enhance that protection, while ensuring the effectiveness of competition-related procedures by relying on the new system led by the general rapporteur (57).

As for the deliberations: it is worth noting that sessions are not held unless at least 8 members are present (58). Decisions of the Competition Council are made by a simple majority, and in case of a tie, the president's vote prevails. It is also important to mention that the French legislator has composed the Competition Authority of 17 members (59), and deliberations of the French Competition Council are only valid with the presence of 8 of its members for the expanded formation. Sessions can be held in a permanent mini-committee composed of three members, or in a "section" where the president of the council determines its members and is chaired by either him or one of his deputies. Then the decision is issued as a final stage.

3.5 DECISIONS (AUTHORITY TO IMPOSE SANCTIONS)

Here we address the scope of the Competition Council's authority to impose sanctions through issuing decisions for the same purpose.

The decision comes as a natural result of the mentioned procedures; it is decisive in ensuring the principle of competition protection and its proper functioning. It is justified necessarily, whether it concerns dismissing a claim when the investigation does not lead to finding abusive practices resulting from a dominant position, suspending the case until a judicial verdict is issued, dismissing it by default when the notifying party withdraws, or issuing a conflicting decision indicating the commitment of abuse resulting from a dominant position - the subject of the study, and so on, of various decisions taken.

It should be noted that causing criminal decisions signed by the Competition Council, despite the legislator's silence regarding their imposition, is necessary due to its impact on the defendant's person and reputation. In terms of form, a specific form is not required in the decision, as the formal procedural rules applicable in the judicial courts
are not imposed on the Competition Council as an independent administrative authority. However, it is necessary to mention the deadline for appeal and the names, attributes, and addresses of the parties notified under penalty of nullity (60).

Moreover, the decision must be notified and executed; the relevant parties are notified for execution through a judicial report, and a copy is sent to the Minister responsible for commerce. Also, the decision must be published in the official bulletin of competition (61).

To review the various decisions issued by the Competition Council, it is acceptable to classify them according to their importance; they are either final or temporary and subject to appeal before the Judiciary Council (Algeria's capital for Algerian law and Paris for French law).

A - Interim orders and/or precautionary measures

These are for cases that require urgent action, with preventive rather than punitive nature, and the content of the orders focuses on the actions of the establishment rather than its structures. The French Competition Council has the authority to amend external contractual terms, while the Algerian legislator, through Law 95-06, granted the Competition Council the authority to impose contractual forms related to the establishment's structures. This is evident in the possibility of the Algerian Competition Council issuing an order to restructure an establishment (exercising dominance) to put an end to this practice, after the establishment persists in its position despite being warned by the council that in case of recurrence, restructuring the establishment will be resorted to, and also ordering the concerned establishments to cease these practices or return to the previous situation within the period specified by the council.

However, Order 03-03 concerning competition did not adopt its predecessor's provisions but generally adopted the possibility of the council taking justified orders aimed at putting an end to practices that restrict competition, without going into details.

As for French law, either the cessation of abusive practices or returning to the previous situation before the practice. Moreover, the Competition Council or the competition authority is not bound by the requests of the threatened establishments; it can take all measures it deems appropriate according to its own assessment.

The Competition Council may attach a financial penalty to the order, either immediate or payable in case of non-execution after the deadline set by the council for it. In general, the interim orders or precautionary measures taken by the Competition Council...
Council are based on Article 46 of Order 03-03 concerning Algerian competition and the corresponding Article L.464-1 of the French Commercial Code. It must be taken into account that the request for precautionary measures must be related to a notification in the matter that has been initiated for investigation and has an urgent nature due to the damages suffered, whether it is the public economic interest, the affected establishments from these practices, the sector as a whole, or consumers. Examples include enabling access to certain documents, or refraining from deliberately tarnishing the reputation of a competing product or service, etc. The establishment that fails to comply with these abusive practices orders and precautionary measures within the specified deadlines may lead the Competition Council to impose threatening fines for each day of delay.

B - Disputable decisions concerning the imposition of penalties

The Competition Council enjoys the authority to impose financial penalties as original sanctions, which may also include supplementary penalties. As for the original penalties, if the Council confirms the existence of abuse resulting from a dominant position as a restricted practice in competition, prohibited by law, it issues decisions consisting of enforceable financial penalties. However, this does not preclude challenging these decisions before the competent judicial authorities according to the established legal procedures.

The Algerian legislator has strengthened these penalties in Law 08-12, amended and supplemented by Order 03-03 relating to competition, compared to what it was before. It decided on a fine not exceeding 12% of the turnover amount without the investigator's fees, imposed on the condemned institution or institutions during the last concluded fiscal year. Alternatively, a fine equal to at least double the profit generated by this abusive practice may be imposed, provided that this fine does not exceed four times that profit. In case of ambiguity in determining the relevant capital, the fine does not exceed 6 million Algerian dinars.

The same approach has been adopted by the French legislator, who also tightened financial penalties to deter such abusive behavior, as seen in the law concerning new economic regulations (Loi NRE) issued on May 15, 2001. It stipulates a penalty not exceeding 10% of the turnover amount without fees for the convicted institution or institutions. If it does not concern an institution, the penalty does not exceed 3 million euros.
Based on the above, we can identify the characteristics of these original penalties issued by the Competition Council, which align with the jurisdiction of the judicial authorities (first instance). However, they may still be purely administrative penalties, being financial penalties of an administrative nature, as their source is limited to a purely administrative body or authority outside the established judicial systems.

The Algerian legislator has emphasized that the Competition Council relies on specific criteria in imposing penalties, particularly:

The importance of the convicted institution's position in the reference market: the Council assesses its dominance based on quantitative and qualitative criteria and whether it is individual or collective.

The proportionality of the penalty to the seriousness of the actions: the Council evaluates the abusive practice's impact on the market, its duration, recurrence, fraudulent means used, etc.

The proportionality of the penalty to the economic damage: the Council considers the competition's condition in the reference market due to the abusive practice's impact on raising prices, restricting market entry, hindering economic and technological development, and its extension to affect neighboring or related markets.

Cumulative benefits: it examines the total profits obtained by convicted institutions behind these abusive practices.

The extent of cooperation of the concerned institutions during the investigation phase: the measures adopted by the Algerian legislator, especially in terms of reducing the financial penalty or even not ruling on it at all, fall within the concept of "compliance measures" adopted by the French legislator. In cases of multiple offenders, each penalty must be justified individually based on each person's personal responsibility in implementing or participating in these abusive practices.

Regarding the proportionality of the financial penalty, considering each convicted individual's contribution to the abusive practice, if the latter is an institution, the contribution is measured by the turnover achieved in the last concluded fiscal year when the Competition Council's decision was made. If it concerns an organization or professional association, the contribution is linked to the subscription amount provided by the members and other resources recorded in its budget.

As for the supplementary penalties:
If the decisions of the Competition Council are published fully or partially through any other means of communication, they may be published in national, regional, or local newspapers, professional or specialized publications. These decisions may also be displayed and distributed according to the council's perspective, which suits the abusive practice and its impact at all levels, especially on consumer nature and the reference market's nature. This approach has been adopted by both the Algerian and French legislators.

Other decisions include:

Decisions concerning procedural violations: The Algerian legislator allows the Competition Council to impose a fine not exceeding 800,000 Algerian dinars based on the rapporteur's report against institutions that provide false information, delay in providing it, or do not provide it during the investigation within the deadlines set by the latter. It also allows for the imposition of a threatening fine of not less than 100,000 Algerian dinars for each day of delay.

Decision to accept compliance measures: This approach, adopted by the French legislator, emphasizes the necessity of resorting to an amicable solution based on reaching an agreement satisfactory to all parties instead of imposing a penalty. If the Competition Council or the competition authority considers the proposed commitments by the institutions to address the main goal of protecting competition and settling the objective grievances, it may accept these commitments, making them compulsory. Then, the competition authority may issue penalties within the framework of non-compliance with these commitments.

Decision of non-acceptance or rejection: This occurs if the facts do not fall within the Council's jurisdiction or are not supported by sufficiently convincing elements.

Decision of non-establishment: If the investigation does not reveal an actual prohibited abusive practice.

Preservation decision: Parties may waive their claims, and in that case, the Competition Council may decide to preserve the case. It may also continue to proceed with it, and in that case, the notification is automatic.

Finally, both the Algerian and French legislators agree that all financial penalties and threatening penalties imposed by the Competition Council (or the competition authority) are due debts to the state and are collected on this basis (62).
4 CONCLUSION

In summary, The Algerian Competition Council is an autonomous administrative authority that acts on behalf and for the account of the State to enforce competition rules. It has legal personality and financial autonomy. It is placed under the Minister responsible for trade without being under their supervision. This all serves to confirm its absolute independence.

Indeed, this authority is endowed with the power of sanction, with all that implies. Therefore, unquestionably, the Competition Council (without going through a competent jurisdiction de jure) sanctions restrictive or anti-competitive practices and settles disputes in this regard.

In this context, the competition authority appears as an economic judiciary, distinguished by its own means, especially quasi-judicial ones: since the ability to impose sanctions, this imperium certainly gives it the character of a judiciary, or even a de facto jurisdiction: both in its form (referring to Delegating Jurisdiction to the Competition Council), and also in its content (referring to the "quasi-judicial" procedural process of administrative enforcement).

In fine, the Algerian Competition Council, as an independent authority, has long been confined to a role of a sanctioning authority, mainly intervening ex post. Although it could act on economic structures by relying on its power of injunction and its advisory function.

However, within the framework of regulation, this competition authority already had a special competence through its board and specialized rapporteurs, being able to rule promptly through the procedure of conservatory measures.

This same regulatory function especially requires flexible tools, more flexible interventions, such as recommendations, opinions, dispute resolution, the development of catalogs of best practices; it involves more market actors and favors discussion, mediation, or even compromises and concessions.

REFERENCES

(1) See in this regard, C.CHAMPAUD, L'idée d'une magistrature économique (Bilan de deux décennies), Justices n°1 Janvier/Juin 2005, p.74.
Ordinance No. 86-1243 of December 1, 1986 (repealed) concerning freedom of prices and competition (Official Gazette of December 9, 1986). The 1986 decree, which establishes the Competition Council, introduces significant innovations. It expands the possibilities of filing complaints (particularly for businesses), transfers the power of sanction from the minister to the Council (accompanied by judicial control), and establishes a procedure that further guarantees the rights of those involved; available at: http://www.autoritedelaconcurrence.fr

The law of July 19, 1977, created the Competition Commission, which was entrusted, in addition to the Technical Commission on Agreements and Dominant Positions, with two additional responsibilities: advising the government on any matter concerning competition and giving opinions on merger operations or projects; available at: http://www.autoritedelaconcurrence.fr

The decree of August 9, 1953, inserted provisions on illicit agreements into the ordinance of June 30, 1945, and created the Technical Commission on Agreements. These provisions were extended to abuses of dominant position by the law of July 2, 1963. The Technical Commission on Agreements and Dominant Positions was tasked with providing advice to the Minister of the Economy on practices related to agreements and dominant positions. Its opinions could lead the minister to impose financial sanctions or refer the case to the criminal judge; available at: http://www.autoritedelaconcurrence.fr

See Article L.461-2 of the French Commercial Code.

Competition Authority, presentation; available at: http://www.autoritédelaconcurrence.fr

Law No. 89-12 dated July 5, 1989, concerning prices, published in Official Journal No. 29 issued on July 19, 1989. Particularly Article 27, which states "Any abuse resulting from dominance over a market or part thereof is considered unlawful..." and also Article 56, which stipulates that the minutes drawn up in accordance with the provisions of this law shall be submitted immediately after their drafting (and after their registration in the register designated for this purpose and in accordance with the legal formalities adopted) to the authority responsible for monitoring prices in the region, which must send them within 15 days to the competent regional public prosecutor. Any abuse in exploiting a dominant position in the market shall be punished by imprisonment for a period of 6 months to 2 years and a fine of 5000 to 100,000 Algerian dinars or one of these two penalties. It shall be under the jurisdiction of criminal courts.

Article 90 of Ordinance No. 95-06 concerning competition (revoked) states: "Violations of the provisions of Articles 6, 7, 9, 10, 11, and 12 of this decree fall under the jurisdiction of the Competition Council."


Jean-Jacques BURST, Robert COVAR, Droit de la concurrence, op-cit, p. 36


(20) Michel DELMAS-MARY, Geneviève GIUCELLI-DELAGE, Droit pénal des affaires, 1ère édition, PUF, 1990, p. 521

(21) Article 17 of the December 1, 1986 ordinance, which later replaced Article L 420-6 of the Commercial Code, concerning imprisonment for up to 4 years and a fine of €750,000, imposes personal liability on any natural person found guilty of fraudulently preparing, organizing, or implementing practices stipulated in Articles L 420-1 and L 420-2 of the Commercial Code (formerly Articles 7 and 8 of Decree No. 86-1243 relating to price freedom and competition), with the possibility of publishing the full or summarized decision in selected newspapers, at the expense of the convicted person.


(24) Articles 15, 16, and 17 of Presidential Decree No. 96-44 dated January 17, 1996, specifying the internal regulations of the Competition Council, Official Journal No. 05 issued on January 17, 1996.


(26) Article 44/1 of Decree 03-03 as amended and supplemented: "The Minister responsible for trade may notify the Competition Council, and the Council may consider cases on its own initiative or upon notification from institutions or bodies mentioned in paragraph 02 of Article 35 of this Decree, if they have an interest in doing so."


(28) Article L.462-1 " ... it may also provide its opinion on the same issues at the request ... of chambers of agriculture, chambers of crafts or chambers of commerce and industry ..., regarding the interests they are responsible for."

(29) Mayors within the scope of their prerogatives in commercial urban planning (in case of abusive exploitation of a dominant position or a state of economic dependence by a company or a group of companies operating one or more retail stores (Article L. 752-5 and L. 752-26 of the French Commercial Code).

(3) Refer to Article 16 of Ordinance No. 95/06 (revoked).
(30) And this is contrary to what was stated in the repealed Order 95-06, especially in its Article 23/4: "The Competition Council must respond to the petitions submitted to it within a maximum period of sixty (60) days from the date of receiving the petition."

(31) Article 44/3 of Ordinance 03-03 states: "The Council may, by reasoned decision, refuse to accept the notification if it deems that the facts mentioned do not fall within its jurisdiction or are not supported by sufficiently convincing evidence." This is the same as what was stated in the French text in Article 19 of the French Competition Law of 1986, which became Article L.462-8 of the French Commercial Code after the latter was repealed.

(32) Article 2 of Ordinance 03-03 (as amended and supplemented by Law 10-05) and Article 44/2 of Order 03-03 (as amended and supplemented) stipulate: "The Competition Council shall consider practices and actions brought before it if they fall within the framework of the application of Articles 6, 7, 11, and 12 above, or are based on Article 9 above." This corresponds to Article 11/2 of the decree issued on December 1, 1986, which became Article L.462-5 of the French Commercial Code after its repeal.

(33) Article 44/4 of Ordinance 03-03, as amended and supplemented, states: "Claims that have exceeded a period of three years without any investigation, examination, or penalty shall not be brought before the Competition Council."

(34) This article was amended after the inclusion of the French Competition Law in the Commercial Code, extending the period to five years instead of three.

(35) Renée GALENE, Le droit de la concurrence appliqué aux pratiques anticoncurrentielles, Litec, Paris, 1995, p. 68


(37) Article 44/3 of Ordinance 03-03 as amended and supplemented, Article 16/3 of the internal regulations of the Competition Council, Article 19 of Decree 86-1243 concerning price freedom and French competition, which came after the annulment of Article L.462-8 of the French Commercial Code.

(38) Michel PEDAMON, Droit commercial (commerçants et fonds de commerce, concurrence et contrats de commerce), 2ème éd, Dalloz, Paris, 2000, p.452.


(40) Refer to articles 66 and 67 of Law No. 89/12 dated July 5th, related to prices, Official Journal No. 29 of 1989.

Article L.464-1 of the French Commercial Code. It states that the petitioner can be the Minister of the Economy, collective interest groups, or institutions, unlike the Algerian legislator who did not specify the meaning of the plaintiff.

(42) Article 10 of Law No. 2000-03, which establishes the general rules relating to postal and wired and wireless communications, states: "An independent regulatory authority with legal personality and financial independence shall be established. The headquarters of the regulatory authority shall be in the capital, Algiers." Additionally, Article 13 of the same law states: "The regulatory authority shall undertake the following tasks:

(43) Article 39 of Ordinance No. 03-03, as amended and supplemented.

(44) Article 37 of Ordinance No. 03-03, as amended and supplemented.


(46) What can be inferred from the text of Article 51 of Ordinance 03-03, as amended and supplemented, is matched by Article 47 of the French Competition Law, Order No. 86-1243, and following its repeal became L.450-3 of the French Commercial Code.


(48) Emmanuel PUTMAN, Contentieux économiques, 1ère éd, PUF, Paris 1998. p. 179

(49) Véronique SELINSKY, "Concurrence, contrôle des ententes et des abus de position dominante en droit français", Juris-class. Concurrence et consommation, fasc. 370. p. 12


(50) The NRE law enabled investigators to act swiftly when there is only a presumption of an offense being committed (caught in the act). Consequently, the authorization request can be "lightened," meaning it may only contain indications that will need to be substantiated later on (Article L. 450-4, paragraph 2).


(52) Article 52 of Ordinance 03-03 as amended and supplemented.

Article 10 of the EC Treaty: "Member States shall take all general or specific measures necessary to ensure the fulfillment of the obligations arising from this Treaty or resulting from the acts of the Community institutions. They shall facilitate the achievement of the Community's mission. They shall refrain from any measure which could jeopardize the attainment of the objectives of this Treaty."

Article 28/3 of Algerian Ordinance 03/03 corresponds to Article 25 of French Order 86-1243 concerning price freedom and competition, which became Article L.463-7 of the French Commercial Code after its annulment.

Articles 24 to 28 of Presidential Decree 96-44 dated January 17, 1996, which defines the internal regulations of the Competition Council, Official Gazette No. 5 issued on January 21, 1996.

L.463-03 of the French Commercial Code: "Except in cases where the communication or consultation of these documents is necessary for the exercise of the defense rights of a party involved, the General Rapporteur of the Competition Authority may refuse a party access to communication or consultation of documents or certain elements contained in these documents that involve the trade secrets of other persons. In this case, a non-confidential version and a summary of the documents or elements in question are accessible to them."

Please note that according to Article 24 of Order 03-03 (amended and supplemented by Law 10-05), the members of the council are only 12 members. "The Competition Council consists of twelve (12) members belonging to the following categories:

The president and the board of members, consisting of 6 members affiliated with the Council of State, the Court of Auditors, the Court of Cassation, and other judicial bodies, whether administrative or ordinary, and 5 members from personalities "selected for their competence in economics, competition, or consumption from a list provided by members affiliated with judicial bodies," and 5 members representing various sectors of activities, "production, distribution, craftsmanship, services, and freelance professions," are added to this basic formation. In addition to this basic composition, the government's governor, appointed by the Minister of Economy, performs his functions through the Director-General of the General Directorate of Competition, Consumer Affairs, and Fraud Prevention. If the latter attends the sessions, he has no voting rights but has the option to provide comments; See in this sense Jean KERNINON, droit public économique, Imprimerie France Quercy, Paris, 1999, p 161; et sur l'autorité de la concurrence, http://www.autoritedeconcerence.fr

Presidential Decree No. 96/44 dated January 17, 1996, establishing the internal regulations of the Competition Council, Official Journal No. 5 issued on January 21, 1996.

Articles 44/3 and 45/1 of Ordinance 03-03 as amended and supplemented.

Articles 47 and 49 of Ordinance 03-03 as amended and supplemented.

Article 71 of Decree 03-03 as amended and supplemented, and Article L.464-4 of the French Commercial Code.
(7) Articles 24 and 25 of Ordinance 03-03 as amended and supplemented.

(8) Article 26 of Ordinance 03-03 as amended and supplemented.


1 - Six (6) members selected from among personalities and experts holding at least a Bachelor's degree or equivalent university degree and professional experience of at least eight (8) years in the legal and/or economic field, with qualifications in competition, distribution, consumption, and intellectual property.

2 - Four (4) members selected from among qualified professionals practicing or who have practiced activities with responsibilities and holding a university degree, with at least five (5) years of professional experience in the fields of production, distribution, crafts, services, and freelance professions.

3 - Two (2) qualified members representing consumer protection associations.

And Article 15 of the same law states: "The Competition Council shall refer the case to the competent regional public prosecutor for judicial proceedings, as the organization and implementation of practices contrary to competition or abuse resulting from dominance provided for in Articles 6, 7, 10, 11, and 12 of this decree shall entail personal liability for any natural person involved, without prejudice to the penalties provided for in Articles 13 and 14 of this decree. In this case, the judge may impose imprisonment for a period of one month to one year against natural persons who have caused or participated in the aforementioned practices."

Article 35/02: "... local authorities, economic and financial entities, institutions, professional associations, trade unions, as well as consumer associations."

Claude CHAMPAUD, L'idée d'une magistrature économique (Bilan de deux décennies), Justices n°1 Janvier/Juin 2005.

Council of State decree No. 2009-142 of February 10, 2009 specifies the conditions for the application of this article.

Emmanuel PUTMAN, Contentieux économiques,1ère éd,PUF,Paris 1998.

Ensure the existence of effective and legitimate competition in the markets of postal and wired and wireless communications by taking all necessary measures to promote or restore competition in these markets..."


Members of the Competition Council exercise their functions permanently.


Michel DELMAS-MARY, Geneviève GIUCELLI-DELAGE, Droit pénal des affaires, 1ère édition, PUF, 1990.


Véronique SELINSKY, "Concurrence, contrôle des ententes et des abus de position dominante en droit français", Juris-class. Concurrence et consommation, fasc. 370, p. 12