THE INTRINSIC DISPUTE IN ANTITRUST LAW: BETWEEN NON-LITIGIOUS AND LITIGIOUS

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ABSTRACT

Although the Competition Council is the primary regulator of competition by the force of law, especially after adopting the principle of the Council's repressive authority in the economic field, however, in some cases, not every competitive dispute necessarily falls within the jurisdiction of the Competition Council, especially those related to anticompetitive practices. Here, we may be dealing with delineating the competencies of the Competition Council, allowing room for judicial review.

Undeniably, there is a non-litigious dispute when the judge does not have to pronounce on the guilt or innocence of those involved. It is a trial that allows for the search for evidence to determine the outcome of the case, so it is a dispute that is not resolved by a court decision. On the other hand, a litigious dispute is a disagreement between two parties that falls within the jurisdiction of a court. In this case, the judge will determine the guilt or innocence of one or both parties, that is, he will pronounce a court decision that resolves the dispute.

Therefore, the competitive dispute within the provisions of antitrust law has specificities that distinguish it from other disputes in different fields, particularly those related to the independence of proceedings before independent administrative bodies with the authority to impose penalties (whether it concerns the competition authority or sectoral regulatory authorities). Additionally, it involves a range of guarantees for the disputants to ensure a fair trial.

Given the importance of the competitive dispute, we have found it necessary to shed light on it by raising at least two legal points: firstly, the nature of the competitive conflict, and secondly, the guarantees for disputants to ensure a fair trial.

Keywords: competitive dispute, competition law, Competition Council, sectoral regulatory authority, guarantees, fair trial.

INTRODUCTION

Economic competition is the situation in which a large number of economic operators offer products or provide services that are identical or interchangeable with each other freely, while potential customers are in a position to choose from all the proposals presented to them, except if they are the producers themselves.

The principle of competition freedom and its protection is the goal of establishing competition law , and a violation of the principle is a violation of the law that governs it. When any behavior, whether directly or indirectly, aims to achieve the same purpose, it may aim to obstruct, limit, or disrupt competition freedom in the same market or in a significant part of it, especially when it takes the form of an agreement or arbitrary action resulting from dominance or exploitation of economic position, we are dealing with restrictive and/or anti-competitive practices prohibited by law, leading to a presumed competitive dispute that falls under administrative (quasi-judicial) review conducted by the Competition Council or the sectoral regulatory authority if applicable (depending on the relevant sector), under judicial supervision, in addition to pure judicial review conducted at the level of judicial bodies.

Market regulation is not solely subject to competition law provisions, as regulation also interacts with the nature

of the sector: some sectors are subject only to competition rules, while others are subject to sectoral regulation as well, as is the case with the telecommunications sector .

Here, the absolute freedom of affected institutions to choose the type of follow-up or prefer one party over another is not left to chance: even if the matter relates to the same facts, the choice is necessarily relative, considering the requests of the affected institutions on one hand and the jurisdiction of both the Competition Council, the sectoral regulatory authority (legally empowered according to the sector), and the competent courts to address and respond to these requests on the other hand .

While the Algerian legislator has entrusted the authority to adjudicate on restrictive practices to the Competition Council by the force of law - defined exclusively in articles 06 to 12 of the amended and supplemented order 03-03 - as a general principle, this is subject to judicial oversight, as any party affected by the decisions of this independent administrative body can appeal to the judiciary to challenge these decisions, similar to the position of the French legislator .

The legislator has made the Competition Council the primary regulator of competition and the official expert in the field of competition, after the judicial authority delegated to the judge has shown its limitations, particularly in these technically complex sectors, while criminal justice has shown delays.

Adopting the principle of decriminalization enables the Competition Council to intervene in important 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 have been defined by the legislator within the framework of restrictive practices of competition, as stipulated by Article 44 of the Competition Law.

However, not all matters related to restrictive practices of competition fall within the jurisdiction of the Competition Council, as there are cases, even though they fall within the scope of the application of articles 6 to 12 of the competition law relating to restrictive practices of competition, that fall outside the jurisdiction of the Competition Council. Here, we are at the boundaries of the jurisdictional powers of the Competition Council, which allows room for judicial review.

The same competitive dispute under competition law has particularities that distinguish it from other disputes in other subjects or fields, especially those related to the independence of procedures before that independent administrative body empowered to impose penalties, and the set of guarantees enjoyed by the parties in conflict, in order to ensure a fair trial.

Given the importance of the competitive dispute, we found it necessary to shed light on it through this study with two titles: the nature of the competitive dispute and the guarantees of the parties in conflict to obtain a fair trial.

I. The nature of competitive dispute

The principle of prohibiting any practice that restricts competition is not universally applied, as it is subject to restrictions or legitimate exceptions . The Algerian legislator has adopted the declaration of non-intervention as a restriction on the principle of prohibiting practices that restrict competition . This declaration provides legal protection to any applicant who obtains it from anyone attempting to attack them by engaging in prohibited arbitrariness throughout the validity period of this certificate. The legislator intended with this authorization to take into account the dynamism and complexity of the economic reality, which does not always align with the principles and legal texts that may be characterized by rigidity and stability. While the French legislator did not address such a declaration. In addition to the declaration of non-intervention, we find other exceptions that affect the prohibition principle, especially those related to the application of a legal provision or related to the contribution of the restricted practice to economic and technical progress, such as arbitrariness in a dominant position .

In general, any restricted competition practice is legally prohibited and subject to a set of legal procedures related to the availability of evidence, whether disclosed or proven, to convict the perpetrators and then apply the prescribed penalties. When we talk about procedures, we are talking about the transition from a state of stillness to a state of movement, so we are addressing the arbitrary situation of prohibited dominance.

The Algerian legislator, although it has entrusted jurisdiction to decide on anti-competitive practices to the Competition Council with the force of law , has also entrusted a part of the same jurisdiction to some sectoral regulatory authorities such as the authority regulating postal and wired and wireless communications, especially those disputes related to the issue of interconnection. This is a general principle, but it is subject to judicial oversight, as any aggrieved party by the decisions of these independent administrative bodies can resort to the judiciary to challenge them, which is the same position as the French legislator.

It should be noted that in this regard, the position of the French legislator regarding competitive disputes has adopted that violations committed against competition rules may result in two different but intersecting classic disputes : the objective dispute, which falls within the jurisdiction of competent authorities, and the personal or subjective dispute, which falls within the jurisdiction of the judge who implements the national texts related to the annulment of any problem with competitive violations and also claims for compensation.

The objective dispute is subject to special provisions arising from domestic law (French) from commercial law specifically Articles L.450-1 and following and R.450-1 and following, but also to internal regulations and the ethical charter of the competition authority. As for European law, essentially Regulation No. 1/2003 dated December 16, 2002, relating to the implementation of competition rules under Articles 81 and 82 of the Treaty and an alternative to Regulation No. 17/62 dated February 6, 1962, applicable to Articles 81 and 82 mentioned .

The implementation of French competition law, especially the provisions of French commercial law mentioned from L.420-1 to L.420-5, is the subject of application, whether competitive or complementary, in which case we refer to the competition authority and the general competition administration on one hand and the judge on the other hand.

Regarding complementary jurisdictions between the competition authority and the judge, we say that the former punishes but does not compensate for damages resulting from restricted competition practices. The compensations awarded by the judge later are deterrent in nature, so personal or private lawsuits are then encouraged .

In the 2001 decision Courage , the European Communities Court of Justice reminded the victims (victims of anti-competitive practices) of their right to compensation, noting that such a right enhances the practical nature of European competition rules and has a nature that discourages all such anti-competitive practices. Therefore, such judicial action, or rather compensation-related lawsuits filed before national judicial institutions, contributes to establishing effective competition in the European community due to the absence of European regulatory texts addressing this issue . Thus, the existing gap was bridged before 2003 when national judicial institutions were entrusted with jurisdiction to consider compensation claims falling under Articles 81 and 82, which necessarily led to an increase in the proportion of this type of lawsuits against convicted institutions .

Applying the principle of convergence: Based on Article 4 of Regulation 2003/1, competition authorities and national judicial institutions are required to apply European rules "Les règles communautaires" in parallel with national rules when investigating practices that affect cooperation between member states and by resorting to the principle of "primacy" when the practice involves provisions of Articles 81 and 82 that have been addressed in a decision of the European Commission. In any case, a contrary decision cannot be adopted.

It should be noted that the dominance of European law over the function of national institutions (of each member state in the European Union) occurs in two different stages: during the determination of the applicable law, then during the method of applying the adopted rule, thus national judicial institutions are transformed from independent entities that mostly apply their national (internal) competition law into partially independent entities, mainly aimed at applying European law regarding anti-competitive practices .

It has also been considered that national competition authorities and national judicial institutions do not exceed being mere agents of the European Commission . However, this should not be seen as encroaching on the sovereignty of national institutions, but rather as part of the integration policy adopted by the European community where judicial institutions and national competition authorities constitute the tools of this integration, and their success or failure depends on the support provided by the latter, thus they constitute the cornerstone of this integration rather than mere agents .

In this context, discussion always leads to mentioning the European Competition Network (ECN): In order to harmonize European competition law, national authorities have been gathered in the European Competition Network, which aims to refer the case to the most appropriate authority for treatment and also to regulate the exchange of information, with the Commission being at the heart of the ECN and thus remaining competent if a case is presented before a national competition authority, it does not prevent the Commission from investigating the facts or rather referring the case . Based on Article 11 of Regulation 2003/1, joint cooperation between national competition authorities and the European Commission is assumed to apply European competition rules: firstly, this cooperation takes the form of dual notification, meaning European authorities inform the Commission of the cases they have been notified of, and the Commission transfers all relevant documents to them. Then, national competition authorities are required to consult the Commission if they intend to issue a decision to put an end to the violation, accept commitments within the meaning of Article 9 of the regulation, or withdraw the benefit from the category exemption regulation "bénéficier du règlement d’exemption par catégorie", and the Commission can also be consulted on any matter related to the application of European competition law.

As Article 15 of the regulation dated December 2002 concerns the mutual cooperation between the European Commission and national judicial institutions. This cooperation first focuses on the procedure related to seeking the opinion of national judges. Then, it involves the commitment of the judicial institutions of the member states to transmit to the Commission copies of all judgments and decisions they issue concerning the application of Articles 81 and 82 .

Within the framework of directing the approach to applying European competition law, the Commission automatically submits its written observations to the judicial institution and must obtain the latter's approval in case it wishes to intervene orally (i.e., by providing oral comments).

It is evident that substantive competition disputes have become the subject of several procedural provisions. The procedural law of competition has emerged, aside from its punitive aspect, with a more negotiable feature by introducing optional procedures or alternative procedures , such as leniency procedures, voluntary commitments, and settlement agreements. This is within European law, known as "La transaction communautaire amiable."

Without delving into the criticisms of French domestic law, the Algerian legislature has also addressed some aspects of it . Thus, competition law has succeeded in combining the deterrent aspect represented by fines with new intervention methods involving negotiation with the relevant institutions.

In general, in order to address the restrictive competition practices falling under the umbrella of abuse of dominance, we have chosen to address them through discussing the various procedural stages raised, whether at the level of the Competition Council or the regulatory authority for postal and wired and wireless communications. Considering them as independent administrative bodies authorized by law to adjudicate on competition disputes related to the communications sector.

For example, the proceedings for monitoring abuses in the dominance position involve several stages, whether it concerns the Competition Council or even the sectoral regulatory authority (according to the sector). Despite the leading role of the Competition Council in monitoring restrictive competition practices as a fundamental principle, the interests of the Ministry of Trade responsible for competition and various judicial bodies may intervene in the field of competition protection. Other entities may also intervene in the field of competition. Given the diversity of branches and sectors affected by competition law, especially in the fields of production, distribution, and services, and the diversity of entities involved in the application of this law, including natural and legal persons, public and private law, professional associations, unions, consumer associations, etc. All of this necessarily leads to the plurality of bodies that have to intervene in this area, in various fields and at different levels. When we talk about the field of wired and wireless communications, for example, we necessarily mean the authority regulating postal and wired and wireless communications as a sectoral regulatory authority, independent and specialized in protecting competition in this field, especially regarding interconnection disputes exclusively, which has narrowed the jurisdiction of the Competition Council due to the specificity and techniques of this sector.

As for the independence of procedures:

Competition law enjoys procedural independence, as the administrative procedures adopted before the Competition Council are not governed by the provisions of civil procedural law or criminal procedures, even though some provisions of commercial law serve as a reference . We are also dealing with procedural independence concerning the European law applied by competition authorities .

Thus, in France, as a result of this independence, the Competition Council has adopted its own rules regarding evidence by accepting telephone recordings . This cannot be accepted before civil judicial bodies, which consider such action illegal. For example, the Paris Court of Appeal upheld the Competition Council's decision dated 19/06/2007 to accept such audio recordings as evidence, while the Court of Cassation ruled against it by adopting Article 6/1 of the European Convention on Human Rights . Influenced by the jurisprudence in this area, it sufficed to justify its decision by stating that recording a telephone call by one party without the knowledge of the other party (recorded) constitutes an illegal act, making it unacceptable as evidence. Thus, the justification provided by the Court of Cassation was brief, considering the ruling of the Paris Court of Appeal, which denied any violation of Article 6/1 of the Convention mentioned above, and that, in the absence of regulations governing the evidence presented by the parties before the Competition Council, and considering the procedural independence enjoyed by the Competition Council as an independent administrative body, whether in terms of domestic (French) judicial law or European law, and therefore, the Council decided - as it is entrusted with the task of protecting the general economic system - that the decision imposing penalties issued by the Competition Council, which relied on audio recordings made by the party (who notified) and not by the investigators or the rapporteurs, cannot exclude these recordings solely because they were obtained in an allegedly illegal manner, and thus, the recordings are acceptable as long as they are subject to the principle of adversarial proceedings.

The Council alone determines the extent of the evidence, and based on this, the judges refer back to the three conditions set by the Competition Council for accepting audio recordings as evidence, namely:

Obtaining the recording by a third party other than the investigator.

Using only a relative amount of evidence.

Subject to the principle of adversarial proceedings.

The Council also justifies its decision regarding the specificity of competition violations .

Regarding the role of the "party hearing advisor" function or "auditor advisor":

According to European law and also French law since the Law on Modernization of the Economy (LME), this function has been established to ensure the right to a fair hearing in competition proceedings.

Regarding European law, this function was established in 1982 by the European Commission to ensure the application of the right to a hearing within the framework of competition proceedings established by Articles 81 and 82 of the Treaty establishing the European Communities (TCE). It is considered an auxiliary or associated employee of the competition governor, who organizes and chairs hearing sessions (les auditions) and ensures the proper conduct of the hearing session. It also contributes to the objective nature of the hearing session itself and any subsequent decision, and also ensures that all relevant facts, whether in favor of or against the interested parties, and facts related to the severity of the violation, are taken into consideration during the review of the Commission's draft decisions.

As for French law, it should be noted that this function has been introduced under the Law on Modernization of the Economy (LME) . Although the Competition Council denied the need for such a function in French law, if its presence is justified within the European Commission where there is no separation between investigation and decision-making functions, the situation is entirely different before the Competition Council, which witnesses this separation. The parties may object to the progress of the investigation before an independent collegial body, and thus, the Council does not need the services of this employee as long as it supervises by itself the proper conduct of its natural role in safeguarding the integrity of the procedure .

Regarding the Role of the Counselor :

In the same context, the French legislator, through Article R.461-9 I of the French Commercial Code, stipulated that the counselor has the authority to draw the attention of the general rapporteur to the proper conduct of proceedings. If the counselor identifies an issue related to the respect of parties' rights in a case, they can propose measures to improve the exercise of these rights. The intervention concludes with the preparation of a report to be deposited with the president of the competition authority no later than 10 days before the session, with a copy sent to the general rapporteur and the parties. To fulfill its mission, the counselor can access the case file (related to the notification), without being concerned with document confidentiality or proceedings. Their intervention only occurs after the parties have been notified, marking the beginning of the discussion phase and the submission of comments and subsequent procedures. Although appointed by the minister, this is done after consulting the collegiate body of the competition authority, and their presence at the session is not mandatory .

II. Guarantees of Fair Trial

Given the impossibility of categorizing the separation proceedings in disputes conducted either at the level of the Competition Council or the Regulatory Authority within a scheduled judicial trial, whether civil, criminal, or administrative, due to the lack of stability and specificity in such proceedings, some legal scholars have described these proceedings as unnamed trials or "Le procès innomé" . Consequently, independent administrative authorities, especially their role in resolving disputes between institutions - particularly in the economic sphere - are considered part of economic jurisdiction. This combines economic expertise, especially in sectoral regulatory authorities where it requires understanding and mastery of the technical aspects, reconciliation through negotiation and application of optional or alternative procedures to contain disputes, as well as arbitration, decision-making authority, which involves issuing punitive decisions, and judicial oversight, as decisions of competent independent administrative authorities are subject to appeal before specialized judicial bodies (second instance).

Despite the fact that independent administrative authorities adhere to judicial standards, considering their role in legal reminder and dispute resolution, and their independence, they remain non-judicial administrative bodies as they do not issue judgments with binding force, hence they can be described as quasi-judicial administrative bodies. Therefore, the term "trial" may not be suitable for procedures outside judicial bodies, but our use of this

term is based on analogy to the latter, given the specificity of the procedures conducted before the Competition Council or sectoral regulatory authority as independent administrative authorities (responsible for criminal sanctions), which, with some reservation, resemble to some extent what is done before judicial bodies, although "trial" remains a term exclusive to the judiciary. Through this, we aim to highlight the guarantees enjoyed by each party before these authorities due to restricted competition practices, especially those related to abuse of dominance.

Principle of Adversarial Proceedings:

There is no doubt that the Algerian legislator has adopted this principle through Order 03-03, especially in its Articles 52, 53, and 55, where any objection or report (prepared by the rapporteur) directed against a party after notification can be discussed through a response within the legal deadlines by submitting written comments according to the administrative procedures adopted before the Competition Council. As for the European legislator, Regulation No. 2003/1 enshrines this principle in its Article 27, focusing on the right of concerned institutions to express their opinions on objections communicated to them, and emphasizing that the European Commission does not base its decisions except on objections that have been the subject of comments from the concerned institutions. As for French law, according to Article L.463-1 of the French Commercial Code, investigations and procedures before the competition authority are fully discussed, including the notification of objections and reports where parties can express their comments, and there are no provisions imposing the obligation to adopt an oral report by the rapporteur or the general rapporteur or the assistant general rapporteur, the written form is sufficient, along with notification to the relevant parties. In this regard, there is no violation of the principle of discussion considering the ability of the parties to respond to oral comments during the session . As for hearing witnesses, the principle of adversarial proceedings also allows the competition authority to request the hearing of other witnesses .

The competition authority also has discretion to determine the effectiveness or feasibility of the request in the discussions and consequently accept or reject it without the need to justify its decision to reject since there is no provision requiring it to do so, which may contradict the provisions of the European Convention on Human Rights (ECHR) .

Duration of Proceedings:

Regarding a reasonable timeframe, the competition authority often exceeds the duration of proceedings, negatively affecting the parties' ability to defend themselves, thus violating the provisions of Article 6 paragraph 1 of the European Convention (ECHR) which imposes the obligation of resolving disputes within a reasonable time. However, the complexity of proceedings should be taken into account, for example, the abundance and complexity of case documents that take time to examine during the investigation may justify the duration of the proceedings. But if the case file does not present any particular difficulties, the concerned parties can raise the length of the investigation proceedings that prevented the collection of necessary tools related to their defense. In this regard, the concerned parties cannot raise internal reasons such as the impossibility of requesting new explanations from an employee who left the institution since the beginning of the proceedings or the difficulty in finding some documents due to mergers, etc., which are unrelated to the investigation proceedings and procedures before the competition authority.

As for French law, the penalty for violating the provisions of Article 6 paragraph 1 of the European Convention on Human Rights, especially the breach of the obligation to decide within a reasonable time, does not invalidate the proceedings but compensates for the damage that may occur as a result or rather invalidates the penalty decision. The Paris Court of Appeal has adopted the possibility of imposing and determining penalties while taking into account some consequences resulting from the duration of the proceedings, considering it unfair to adopt the latest available financial data from the convicted institution if it has significantly increased since the beginning of the proceedings due to reasons beyond the concerned practice .

Separation between Investigation and Decision Functions :

The Algerian legislator adopted the separation between the functions of investigation and decision when the general rapporteur was entrusted with coordinating with all rapporteurs the task of investigation without involving them in the deliberations leading to decision-making, as the rapporteur has extensive powers to examine, receive, and seize any document regardless of its nature without being concerned with professional secrecy and also has the authority to request any necessary information from third parties (non-concerned parties) . As for the French legislator, it concerns the law (NRE) issued on May 15, 2001: during the procedures adopted before the competition authority, compliance with the principle of loyalty ensures adversarial proceedings according to Article L.463-1 of the French Commercial Code and also the principles of independence and equality applied before the competition authority. The latter has been further reinforced by the separation between the investigation and decision-making based on Article 6-1 of the European Convention on Human Rights. This separation between the functions of investigation and judgment was reinforced by the

order issued on November 13, 2008, where several powers were transferred to the general rapporteur, especially granting additional time, deciding on the adoption of simplified procedures, managing business secrecy, managing file empowerment, and the order also enables the automatic notification proposal to the competition authority regarding facts that may constitute anti-competitive practices, and the competition authority cannot notify itself automatically as it must be suggested in advance by the general rapporteur to the collegiate body.

Non-Publicity of Debates:

We can observe the Algerian legislator's reliance on the secrecy of sessions , but despite this, and to establish the rights of defense, concerned parties can attend sessions to hear or have their representatives present, or attend with their lawyers or any person they choose . What distinguishes the court or judicial institution from the competition authority is the latter's reliance on administrative procedures that may involve flexibility and efficiency, allowing it to intervene in advance, although it does not correspond directly to what is stipulated in Article 6 of the European Convention on Human Rights regarding the legally established form. Judicial oversight of this intervention by the competition authority is within the limits of the provisions of Article 6 mentioned above: by adopting rules of procedure for sessions and trials, where open sessions are a general principle and their confidentiality is an exception, etc.

On the other hand, Article 25 paragraph 1 of the Order issued on December 1, 1986 (which became Article L.463-7 paragraph 1 of the French Commercial Code) stipulates that the Council's sessions are not public. However, it should be noted that to protect the rights of defense, parties have the right to attend, request to be heard, with the possibility of representation. The Council also has the authority to involve any person who may contribute to informing it according to paragraph 2 of the same article.

CONCLUSION

In the end, it must be emphasized that the competitive conflict in antitrust law raises two types of proceedings: administrative proceedings (conducted at the level of both the Competition Council and/or the sectoral regulatory authority) and judicial proceedings conducted at the level of civil or commercial courts .

The aggrieved party by anticompetitive practices, if the legal conditions are met, has the right to directly file a lawsuit before the judiciary, regardless of notifying the Competition Council or the regulatory authority. They may also choose to notify the relevant independent administrative authorities and file a lawsuit before the judiciary either sequentially, concurrently, or by submitting the judiciary to administrative authorities. The general principle of resorting to the judiciary by the affected institution against the arbitrary actions of a dominant institution to claim its rights is an inherent right according to Article 48 of the amended and supplemented Order 03-03, which expressly states this.

At the same time, we cannot speak of absolute freedom for affected institutions to resort to administrative or judicial proceedings or to prefer one over the other. Even if the matter concerns the same facts, the choice is necessarily relative, considering the requests of the affected institutions themselves on one hand and the jurisdiction of both the Competition Council, the postal and telecommunications regulatory authority, and the competent courts to examine and respond to these requests on the other hand .

In general, it may be logical for the claimant (the affected institution) as a first step to approach the Competition Council or the postal and telecommunications regulatory authority to prove the existence of the prohibited violation (especially the arbitrary actions of one institution in its dominant position at the expense of other institutions), given the difficulty in detecting and proving such arbitrary practices. The assessment of its facts and adaptation in light of objective texts and rules requires special expertise in this field. Then, as a second step, resorting to the competent judicial institutions to claim compensation for the damage caused by such arbitrary practices or to invalidate the conditions that demonstrate their arbitrariness and their impact on competition."

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From the Algerian legislator's perspective through the Competition Law: Order 03-03, amended and supplemented, merely mentions restricted competition practices in its second section originally titled "Restricted Competition Practices". Thus, practices contrary to competition are considered part of those

restricted practices, unlike the French legislator who distinguishes between the two types through Book IV of the French Commercial Code, where it distinguishes between anti-competitive practices, especially abuse of dominance, in Chapter II, and restricted competition practices, which were added in Chapter IV.

For example, regarding the telecommunications sector, Algerian legislation through Law 2000-03 (dated August 15, 2000, published in issue number 48 on August 16, 2000), which specifies the general rules concerning postal services and wired and wireless communications, especially Article 13, grants the authority to regulate postal services and wired and wireless communications the task of ensuring the existence of effective and legitimate competition in the postal and wired and wireless communications markets by taking all necessary measures to promote and restore competition between the markets, as well as to resolve disputes regarding interconnection and arbitration in disputes between operators or with users.

Under the provisions of Competition Law (Order 03-03, amended and supplemented), administrative deterrence is limited to issuing orders to cease the complained practices with the possibility of threatening financial penalties in the form of fines in case of persistence, or issuing direct financial penalties as a result of convicting involved institutions or taking temporary measures until the extent of abusive practices restricting competition is determined. Regarding sectoral regulatory authority such as the authority to regulate postal services and wired and wireless communications and its jurisdiction to resolve disputes related to interconnection, it can suggest to the competent minister to issue penalties by permanently revoking licenses or temporarily suspending them. Judicial deterrence is limited to determining compensation for victims of abusive practices if proven, or invalidating contractual obligations if they contain provisions contrary to or restricting competition.

Decisions issued by the Competition Council are subject to appeal before the Algerian Judicial Council (Commercial Chamber) under the provisions of Article 63 of Order 03-03, amended and supplemented, while the French legislator's counterpart is the Paris Judicial Council under the provisions of Article L.464-8 of the French Commercial Code.

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These decisions can be consulted on the website of the Directorate-General for Competition: http://ec.europa.eu/competition/elojade/antitrust/nationalcourts/.

D. WAELEBROECK, « Le développement en droit européen de la concurrence des solutions négociées (engagements, clémence, non contestation des faits et transactions) : que va-t-il rester aux juges ? », GCLC Working Paper, 01/08. A. VIALFONT, « Le droit de la concurrence et les procédures négociées », RIDE 2007, p. 157.

Article 60 of Order 03-03, as amended and supplemented, stipulates that: "The Competition Council may decide to reduce the amount of the fine or not to impose it on institutions that acknowledge the violations attributed to them during the investigation of the case, cooperate in expediting the investigation, and undertake not to commit violations related to the application of the provisions of this order. The provisions of the preceding paragraph do not apply in the event of recurrence, regardless of the nature of the committed violations." Thus, upon examining the text of the article, we find that it refers to the investigation stage, not the pre-investigation stage, as is the case with conducting the transaction.

For example, Article L.450-4 of the French Commercial Code

Cass.com, 14déc.2004 : Europe 2005,comm.obs.L.Idot ;ADE 2005,obs.L.Arcelin

Cons .conc,déc.n°05-D-66,5déc.2005,pratiques mises en œuvre dans le secteur des produits d'électronique grand public :RTD com.2006,p.325,obs.E.Claudel ;Concurrences n°1/2006 ,p.133,obs.E.Claudel ;C.Momege, « Le conseil de la concurrence reconnaît la possibilité pour les parties d'utiliser les enregistrements sonores effectués à l'insu des interessés , mais en borne l'exercice »,Concurrences n ° 1/2006 ,p.157 ; C. Nourissat, « admission d'enregistrements au rang des modes de preuves :attention danger ! »,RLC n°6/2006,p.70.

The European Convention on Human Rights, commonly known as the European Convention on Human Rights, is an international treaty signed by the member states of the Council of Europe on November 4, 1950, and entered into force on September 3, 1953. The Convention has evolved over time and includes several protocols. "European Convention on Human Rights," an article from Wikipedia, the free encyclopedia. Available at: http://fr.wikipedia.org/wiki/Convention_europ%C3%A9enne_des_droits_de_l'homme

Contrats,conc.,cosom.2007,comm.n°208,obs.G.Decocq.; L.ARCELIN, Droit de La concurrence les pratiques anticoncurrentielles en droit interne et communautaire, PUR 2009,pp.245-246

Clarified by Decree No. 2009-335 of March 26, 2009.

Conc. Conc., Opinion No. 08-A-05, dated April 18, 2008, regarding the projects for reforming the French competition regulation system.

According to the text, "the president of the competition authority may invite the auditor advisor to attend the session and present their report.".

In this regard, C. Champaud argues in "The Idea of Economic Judiciary (Assessment of Two Decades)," in Justices No.1 January/June 2005, p. 74.

METTOUDI. Robert, Les fonctions quasi-juridictionnelles de l'autorité de régulation des télécommunications, doctoral thesis in law, University of Nice-Sophia Antipolis, 2004, pp. 107-109.

Article L.463-7 of the French Commercial Code provides that the parties may request to be heard by the authority.

The provision is provided for in Article 27-3 of Regulation No. 1/2003 and in Article L.463-7 paragraph 2, which stipulates that the competition authority may hear any person whose hearing appears likely to contribute to its information.

L.ARCELIN, Droit de La concurrence les pratiques anticoncurrentielles en droit interne et communautaire, PUR 2009, p.246

L.ARCELIN, op-cit, p.249

Articles 50 and 51 of Order 03-03, as amended and supplemented.

Article 28, paragraph 3 of Order 03-03, as amended and supplemented, states: "The sessions of the Competition Council are not public."

Article 30 of Order 03-03, as amended and supplemented.

In addition to the highest jurisdiction of judicial institutions in adjudicating appeals against independent administrative authorities (namely, both the Competition Council and the Postal and Telecommunications Regulatory Authority)."

Administrative deterrence does not go beyond issuing orders to cease the complained-of practices, with the possibility of threatening financial penalties in the form of fines in case of persistence, or issuing direct financial penalties as a result of the conviction of involved institutions, or taking temporary measures until the resolution of the extent of anticompetitive practices, or concerning the authority of postal and wireline and wireless telecommunications regulation in resolving disputes related to interconnection and its ability to impose penalties by permanently revoking licenses or temporarily suspending them. Judicial deterrence, on the other hand, is limited to determining compensation for those affected by arbitrary practices if proven, or nullifying conditions related to contractual obligations if they contain provisions contrary to competition or restrictive."