

Competition Council's power to control economic activity



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Abstract

A specialized entity, known as the Competition Council, was established as an independent regulatory authority. The legislator has entrusted it with overseeing competition to protect the market from restrictive practices that might affect pricing and competition. The Council is responsible for addressing issues related to economic dominance or dependency, as well as prohibiting collusive agreements and economic alliances among businesses. Leveraging the powers granted by public authority, the Council enforces regulations to control, prevent, and penalize anti-competitive and price-related offenses. By doing so, it ensures that economic activities are conducted fairly and ethically.

Keywords

Competition Council ;
price;
adjust ;
market ;
sanctions.

الكلمات المفتاحية

مجلس المنافسة؛
الأسعار؛
ضبط؛
السوق؛
العقوبات.

سلطة مجلس المنافسة في ضبط النشاط الاقتصادي

ملخص

في محاولة للحفاظ على المناخ التنافسي من الممارسات المقيدة للأسعار وللمنافسة من تعسف في وضعية الهيمنة أو التبعية الاقتصادية والاتفاقات المحظورة والتجميعات الاقتصادية، القائمة بين المؤسسات الاقتصادية، تم إنشاء جهاز متخصص عرف بمجلس المنافسة بصفته سلطة ضبط مستقلة وأوكل له المشرع مهمة ضبط المنافسة، ويعمل هذا الأخير في إطار ممارسته لصلاحياته التنازعية، على مراقبة وقمع ومعاقبة الجرائم الماسة بالمنافسة والأسعار، نظرا لما يتمتع به من امتيازات السلطة العامة، وعليه يضمن تحقيق التوازن والسير الحسن للنشاط الاقتصادي.

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I. Introduction

The focus on safeguarding competition, ensuring price stability, and upholding a free market system has led to the emergence of specific crimes and violations that the Algerian legislator is determined to address and penalize. Measures have been established to shield competition from practices that could harm the interests of economic institutions and consumers, thereby maintaining the overall economic order. This is evidenced by the prohibition of certain practices that could impede price fluctuations and free competition.

The legislator has endowed the Competition Council with the authority to address and eliminate practices that restrict prices and competition. This is achieved through the establishment of specific procedures that parties must follow before the Council. The Council is tasked with executing its regulatory functions to safeguard the public economic interest. To effectively fulfill these responsibilities, the legislator has granted the Council a prominent role and conferred upon it several special powers. This leads us to the central question: To what extent does the Competition Council contribute to combating abusive practices and stabilizing economic activity?

To address this central question, we employed an analytical approach, focusing on examining the various legal and regulatory texts related to the subject.

II. The first topic :The role of the Competition Council as a repressive judicial body

The Competition Council has specific attributes that allow it to carry out its responsibilities and exercise its powers both effectively and independently, thanks to the authority it commands in the market, both in terms of the nature and significance of the decisions it makes. Before delving into the procedural aspects of interacting with the Competition Council, it is essential to first examine its concept and operational mechanisms. This includes understanding the Council itself (**the first requirement**), identifying who is eligible to notify the Council (**the second requirement**), and examining its function in probing into competitive offenses (**the third requirement**).

II. 1/ The requirement the first :The legal nature of the Competition Council

The Competition Council is an independent regulatory body tasked with for overseeing and managing market competition. To fulfill its strategic role effectively, the Council has been equipped with a unique legal framework that empowers it to take decisive actions when necessary.

It was established and structured uniquely to fulfill its mandate. This discussion will cover the concept of the Competition Council (**First section**), followed by an examination of its powers (**Second section**).

II. 1.1/ First section: Introduction to the Competition Council

The Competition Council holds significant decision-making power, as specified in Article 23 of Order No. 03-03, which has been revised and supplemented by Law 10-05. This article stipulates, "An independent administrative authority, referred to as the 'Competition Council' will be established as a legal entity with financial autonomy, under the oversight of the Minister responsible for Trade." Consequently, the Competition Council is categorized as an independent administrative authority.

II. 1.1.1/ Firstly: the Competition Council is an authority

By designating the Competition Council as an "authority," the legislator has conferred upon it the necessary legal powers to fulfill its roles. These include preventing and addressing practices that harm competition, ending economic monopolies, and resolving disputes arising from such issues. Like other newly established independent administrative authorities, the Competition Council is tasked with overseeing economic activities—a responsibility that was formerly overseen by ministerial authorities, especially the Minister of Commerce ¹.

Thus, the Competition Council is more than just an advisory body, but rather an authority qualified to make mandatory decisions and present a set of proposals, in accordance with Article 34 of Order No. 03/03: "The Competition Council has the power to make decisions, propose, and offer opinions either on its own initiative or at the request of the Minister of Trade. It can also take action or implement measures to ensure proper conduct and promotion of competition..."

II. 1.1.2/ Secondly :The Competition Council is an administrative authority

The administrative nature is confirmed through several aspects, as "the disciplinary procedures applied to members of the Competition Council are as follows: warning, suspension, and stripping them of their status as members

of the Competition Council.”².

As an administrative authority, the actions of the Competition Council are considered as administrative decisions. It exercises powers typically associated with public authority, which are usually granted to executive bodies. Therefore, disputes stemming from these actions and decisions are generally subject to the same judicial review as those involving other administrative bodies. While administrative matters like those of the Stock Exchange Commission and the Postal and Transportation Authority are typically adjudicated by their respective natural and ordinary judges, the Competition Council's decisions may be contested in different forums. Specifically, disputes may sometimes be appealed to an ordinary court (the Chamber of Commerce of the Algerian Judicial Council) or, in other cases, to an administrative court (the State Council), but only concerning assembly decisions³.

1-1-3 Third: The Competition Council is an independent administrative authority

With the 2008 amendment to the Competition Law, the independence of the Competition Council was explicitly strengthened. This independence is ensured through two key standards: the organic standard and the functional standard.

The organic standard emphasizes the Council's independence through its member appointment process and formation rules. The Council is constituted collectively, with its members granted significant legal protections. They are appointed by presidential decree for a renewable term of five years and can only be dismissed under exceptional circumstances.

The functional standard ensures that the Council's decisions cannot be canceled, amended, or overridden by a higher authority, except by judicial review⁴.

II. 1.2/ Second section: The powers of the Competition Council in the field of control and follow-up

Monitoring competitive activity and ensuring fair competition necessitates granting the Competition Council a range of extensive powers and responsibilities. Among these, the most crucial are its supervisory and advisory roles.

II. 1.2.1/ Firstly: The supervisory jurisdiction of the Competition Council

One of the Competition Council's responsibilities is to oversee the practices of economic operators within the framework of competition. If these practices violate fair competition principles, the Council is empowered to impose penalties accordingly.

Ensuring the proper conduct of competition within its oversight domain is a fundamental responsibility delegated to the Competition Council by the legislator. This supervision is primarily preemptive or preventive, aiming to regulate the market, provide recommendations, and issue licenses to various operators before any violations occur. The Council holds exclusive authority to impose penalties for such violations. According to Article 37 of Order No. 03-03, as amended and supplemented, the Competition Council is empowered to undertake all necessary actions within its jurisdiction, including investigations, studies, and assessments.

If the measures taken reveal practices that restrict competition, the Competition Council is mandated to take all necessary legal actions to address and eliminate them. Additionally, if investigations into the enforcement of legislative and regulatory texts related to competition reveal that these texts are imposing competitive restrictions, the Council will take all appropriate measures to rectify these restrictions.

II. 1.2.2/ secondly: Advisory jurisdiction of the Competition Council

The Competition Council has advisory powers because of its expertise in the field of competition. It is consulted on every project involving legislative or regulatory texts related to competition. The Council provides advisory opinions on competition-related matters at the request of the government. Additionally, It can be consulted by local entities, economic and financial organizations, institutions, professional and trade associations, as well as consumer protection groups. There are two main types of consultations that the Competition Council provides.

A- Mandatory consultation

It means that the concerned parties are obligated to consult the Council, regardless of whether its opinion is obligatory or not. According to Article 36 of Order No. 03-03, the Competition Council is required to provide its opinions on issues related to competition or measures that:

- Imposing quantitative restrictions on practicing a profession or activity, or entering a market.

- Setting exclusive fees in some areas or activities.
- Imposing special conditions for carrying out production, distribution and service activities.
- Establishing uniform practices in sales conditions
- Regulating the prices of goods and services deemed strategic by the state ⁵.

B- Optional counseling

The Competition Council offers the option of voluntary consultation, meaning that seeking its advice is not mandatory and abstaining from it does not carry any legal consequences. The Council can provide opinions on any competition-related issues at the request of the government. Additionally it can be consulted by local groups, economic and financial bodies, institutions, professional and trade associations, and consumer protection groups on similar matters upon their request ⁶.

II. 2/ The requirement the second: Persons eligible to notify the Competition Council

"The notification process is seen as the main mechanism for initiating lawsuits before the Competition Council concerning offenses in competitive markets under its jurisdiction. The Council then takes the legally authorized measures, as the notification process marks the start of the Competition Council's engagement with the case.⁷ This process is carried out by people and economic control authorities that we will get to know (**First section**), And also by economic institutions (**Second section**), and subject to notification conditions (**Section Three**).

I. 2.1/ First section: Authorities in charge of public economic order

It is represented by both the Minister in charge of Trade and through automatic notifications by the Competition Council.

II. 2.1.1/ Firstly: Minister in charge of Trade (Ministerial notification)

The Minister of Trade has the authority to notify the Competition Council. As the chief representative of the central administrative authority, the Minister is responsible for overseeing the market and implementing government policies on market regulation and promotion. This includes coordinating with relevant bodies, such as the Sub-Directorate for the Promotion of Competition Law and the Sub-Directorate for Market Surveillance⁸.

The Minister can notify the Competition Council either based on investigations conducted by Ministry of Commerce agents or in response to complaints from affected institutions, provided that anti-competitive practices have been confirmed⁹.

II. 2.1.2/ secondly: Automatic notification

According to Article 44, Paragraph 01 of Order No. 03-03, "...The Council may address cases on its own initiative, meaning it has the authority to consider cases it deems relevant without a formal complaint. As an independent administrative authority tasked with market oversight, it can conduct direct investigations into market conditions using the legal tools at its disposal.

In practice, the Competition Council resorts to using automatic notification in the following cases:

A- Failure to accept the notification provided by the party qualified to do so:

If a notification petition submitted to the Council is rejected because the evidence provided is inadequate or unconvincing, the Council may proceed with an automatic review. This enables the Council to carry out a comprehensive investigation into the matter, ensuring that potentially illegal activities by third parties are addressed and not left without consequence¹⁰.

B- The presence of practices that restrict competition in another market

If the Council is notified of a prohibited practice in a market and, upon investigation, finds that this practice has repercussions extending to another market, the Competition Council shall automatically notify it to protect public economic order.¹¹.

C- Failure to notify the Council of this from qualified parties

The Council automatically notifies if legally qualified persons refrain from providing notification. The Council initiates notification if a set of sufficient information is available about violations that would affect and hinder the movement of fair competition.

D- If the notification is withdrawn

the withdrawal of a notification by the party who submitted it, possibly due to a settlement between the parties involved, does not prevent the Council from initiating automatic notification if it deems the issue significant and a potential threat to the relevant market.¹²

II. 2.2/ Second section: Institutions eligible to notify the Competition Council (direct notification)

According to Article 35, Paragraph 02 of the Amended and Supplemented Competition Law, notifications may be submitted by local groups, economic and financial organizations, institutions, professional and trade associations, and consumer protection groups.

II. 2.2.1/ Firstly: Magazine groups

Article 17 of the Constitution states that "local groups, the state, municipalities, and regions" possess legal personality, allowing them to enter into contracts in accordance with public procurement laws. Therefore, these entities have the right to notify the Competition Council about practices that infringe upon competitive freedom, particularly when such practices harm their protected interests¹³. This includes situations involving prohibited agreements, where local communities can alert the Competition Council regarding public contracts awarded to parties involved in such agreements.¹⁴

II. 2.2.2/ secondly: Professional and trade union associations

These associations are represented by the Bar Association, the Doctors Association, the Engineers Association... and others. These associations are granted by the legislator if the matter concerns practices that affect the interests they represent. They are also subject to the competition law even though they do not engage in economic activity, and so that professional associations and unions can Intervention must meet two conditions:

- The activity in question must be within its field of activity.
- The injured person must belong to it¹⁵.

II. 2.2.3/ Third: Economic institutions

The most frequent notifications to the Council come from institutions directly affected by anti-competitive practices. Conflicts of economic interest in a particular market often result in disputes between competing institutions. Consequently, any economic entity harmed by such practices has the right to notify the Competition Council and request its intervention to address and halt the anti-competitive behavior.¹⁶

II. 2.2.4/ Fourthly: Consumer protection associations

Consumer protection associations play a crucial role in stimulating economic and social life, empowered by law to assist in market monitoring, especially amid economic openness to national and foreign goods and services. Although these associations are not part of the Competition Law Authority, the legislator has granted them the authority to notify the Competition Council of any violations that restrict competition and harm consumer interests¹⁷

The Competition Council may reject a notification through a reasoned decision if the facts are outside its jurisdiction or lack sufficient information for investigation. Additionally, cases older than three years cannot be submitted to the Council if no investigation, inspection, or penalty has been initiated¹⁸.

II. 2.3/ Section Three : Conditions for notifying the Competition Council

For the notification petition to be accepted by the Competition Council, the concerned parties must: They meet a set of conditions, and therefore the Competition Council must ensure that these conditions are met for accepting the notification. This is what we will clarify and then point out the effects of this notification.

II. 2.3.1/ Firstly: Substantive conditions for accepting the notification

Acceptance of the notification requires meeting the general conditions for filing a lawsuit before any judicial authority, namely interest and legal standing.

A- Adjective

Although the legal texts related to competition are silent about mentioning the qualification requirement, acceptance Notification, as for the Competition Council, is required to be issued by a party that first has the capacity to do so. What is noted regarding this condition is the necessity of its availability among those persons charged with direct notification mentioned in Paragraph 02 of Article 35 mentioned above, which are economic institutions, economic and financial bodies, and various associations, with the Minister being responsible for overseeing trade. The Competition Council is tasked with upholding the public economic order.

While competition laws do not explicitly mention the requirement of legal standing, the Competition Council requires that notifications be submitted by a party with proper capacity. This capacity must be held by the entities authorized to notify, as outlined in Paragraph 02 of Article 35, including economic institutions, financial bodies, and various associations. The Minister of Trade and the Competition Council are responsible for upholding public economic order¹⁹.

B- interest

In contrast to the capacity requirement, the Algerian legislator explicitly recognized, within the framework of Order No. 03-03, it is necessary for the person making the notification to meet the condition of having an interest, as stated at the end of the first paragraph of Article 44: 'If they have an interest in that...'”²⁰.

C- Jurisdiction of the Competition Council

For the Competition Council to accept a notification, the subject must fall within its jurisdiction, specifically addressing practices outlined in Articles 06, 07, 10, 11, and 12 of Order No. 03-03. These include agreements restricting competition, arbitrary dominance, exclusive purchasing contracts, undue economic dependence, and excessively low selling prices. The Council refused to decide on the case of 'Renault' against 'Sovac' regarding an advertising practice harming 'Renault,' stating that it lacked jurisdiction as the issue fell under commercial practices rather than competition law²¹.

Therefore, it can be said that the Competition Council prefers the cases presented before it, as outlined below:

- The violations presented before the Council must be among the prohibited practices stipulated in the Competition Law.
- The facts must not have been time-barred.

II. 2.3.2/ secondly: Formal conditions for accepting the notification

It is required to notify the Competition Council through:

- A written petition is sent to the Chairman of the Competition Council²²The notification petition must include all information related to the offeror, in addition to convincing elements about the facts presented²³.
- The statute of limitations does not expire for a period of three years specified by the legislator under Article 44, Paragraph 04 of Order No. 03-03 mentioned above.
- Initiating the necessary investigation procedures after confirming the Council's jurisdiction over the case presented before it²⁴.
- Assigning the investigation task to judicial police agents and officers²⁵.

II. 2.3.3/ Third: Triggered acceptance of notification

Meeting all the required conditions for accepting the notification has significant effects, enabling the transition to the procedural stage that follows the preparation for adjudicating the cases presented to the Competition Council. These effects can be summarized as follows:

- Declaration of acceptance of the notification.
- Ability to group or separate notifications.
- Inform independent administrative authorities of the notification.
- Ability to request precautionary measures.

- Initiate investigation procedures ²⁶.

II. 3/ The requirement the third: Investigating cases related to anti-competitive practices

Completely According to Once the legally required notification conditions are met, the Competition Council formally accepts the petition. This marks the second step in initiating the investigation stage, where the Council will examine the reported facts and verify their validity, and thus verify whether or not practices restricting competition have occurred. The legislator has specified in the Competition Law to conduct the necessary investigations into that. . Here we will specify the persons assigned to carry out the investigation)**First branch**(Highlighting the powers they enjoy and the obligations they bear)**Second section** (Up to the present investigation)**Section Three**(.

II. 3.1/ First section: Persons charged with investigating and investigating competition crimes

The legislator has granted the authority to investigate competition matters to several categories of individuals, including: as follows:

II. 3.1.1/ Firstly: Competition Council investigators

The General Rapporteur investigates cases assigned by the President of the Competition Council. If they choose not to accept a case under Article 44 of Order 03-03²⁷, they must inform the President with a reasoned opinion. The rapporteur can access all necessary documents for the investigation, regardless of confidentiality claims, and can seize relevant documents. These will be included in the report or returned after the investigation. The rapporteur can also request information from any institution or individual and set deadlines for its submission²⁸.

II. 3.1.2/ secondly: Agents affiliated with the Ministry of Commerce

Under Article 34, paragraph 4, of Ordinance 03-03 as amended by Law 08-12, the Competition Council can request economic investigations or expertise from relevant services, including those from the Ministry of Trade. Several directorates within the Ministry are responsible for this.

A- Extension Public vision for economic control and suppression of fraud

This directorate is responsible for several tasks, including setting national policy for quality control, fraud suppression, and combating anti-competitive and unfair practices. It ensures that economic monitoring and fraud suppression programs are directed, coordinated, and implemented, and conducts investigations into market imbalances affecting the national economy."²⁹

B- General Directorate for Control and Organization of Activities

This directorate consists of four directorates, headed by the Directorate for promoting Competition Law, which ensures the effective operation of competition in markets and the necessary development of rules and conditions for fair and sound competition among economic operators. The Sub-Directorate for Disputes and Relations with the Competition Council works to address dispute files related to anti-competitive practices by contacting With the Competition Council, implementing the Competition Council's decisions and following up on their implementation."³⁰.

C- Foreign interests of the Ministry of Commerce

"The foreign departments of the Ministry of Commerce are organized into state directorates of trade and regional directorates of trade."³¹.

It ensures the implementation of legislation and regulation related to competition and quality, and its powers are limited to conducting local and regional investigations and carrying outIn coordination With other structures.

II. 3.1.3/ Third: Judicial police officers and agents

"The original Order 03-03 did not include judicial police officers or agents for investigation tasks. This changed with the amendment under Law 08-12, which granted them powers to investigate anti-competitive practices.³² Articles 15 and 19 of the Code of Criminal Procedure specify the categories of employees who hold the status of judicial police officers."

II. 3.1.4/ Fourthly: Concerned agents affiliated with the tax administration departments

"The 2008 amendment to the Competition Law added tax administration agents to those responsible for investigating under the Competition Law. Article 49 bis specifies that these employees are qualified to investigate and inspect violations of the order's provisions, including those from the tax administration services."

II. 3.2/ Second section: Powers of investigators in competition crimes

Order 03-03 included some of the investigators' powers, while others were stipulated within Law 02-04 relating to commercial practices. By referring to these two texts, these powers can be identified as follows:

II. 3.2.1/ Firstly: Examination of documents

This procedure is included in Article 51, first paragraph of Order 03-03, which states: "The rapporteur may examine every document necessary for an investigation into the case assigned to him without being prevented from doing so under the pretext of professional confidentiality." This authority vested in the rapporteur is embodied in requesting all documents that he deems necessary during the investigation. The process of investigating the cases brought before it in order to examine them well.

II. 3.2-2/ secondly: Receiving documents and booking documents

After reviewing the necessary documents, the rapporteur can request and obtain any document, regardless of its nature, and retain those that aid in their duties³³.

Article 50 of Law 02-04, which amends and supplements the rules applicable to commercial practices, outlines the nature of these documents. Employees responsible for the investigation process mentioned earlier may "...examine all administrative, commercial, financial or accounting documents, or any magnetic or Information, without being prevented from doing so under the pretext of professional secrecy, and they can order that it be received wherever it is found and that it be seized. The seized documents and materials shall be included in the seizure report or returned at the end of the investigation."

II. 3.2.3/ Third: The authority to hear people to obtain information

Article 53 of Order 03-03 states that hearings conducted by the rapporteur must be recorded and signed by those heard. If they refuse to sign, this refusal must be noted. The individuals may also seek the assistance of an advisor. While the Competition Law does not explicitly grant the rapporteur the authority to summon individuals for hearings, it is inferred from the article that this procedure is permissible. The term 'when necessary' indicates that it is optional, though the article does not specify who the rapporteur can summon³⁴.

II. 3.2.3/ Fourthly: Free entry to shops and places

"According to Article 49 bis of Law 08-12, qualified employees may enter places and shops during investigations. This provision refers to Law 04-02³⁵, which grants these employees the authority to access shops, offices, storage areas, and any location suspected of being related to violations³⁶.

II. 3.3/ Section Three: Presentation investigation

After completing the review and examination of the documents collected by the rapporteurs during the preliminary investigation phase, the rapporteur moves to a new phase, which takes place through two basic steps:

II. 3.3.1/ Firstly: Notification of intakes

This system is considered a new procedure that was introduced under the current competition law. This procedure is in the form of an indictment document that does not require a specific form to be prepared. It includes details about the parties involved, the market in question, and the investigations conducted. It should also provide a description of the practice under scrutiny. However, a single document notifying the issue cannot cover practices occurring in different markets. The rapporteur assigned to the case is responsible for addressing these concerns separately.³⁷

Article 52 of the Competition Law specifies that the rapporteur must prepare a preliminary report outlining the facts and findings. The Chairman of the Council is then responsible for transmitting this report to the relevant parties,

including the Minister of Trade and all interested parties. These parties have up to three months to submit their written observations.

II. 3.3.2/ secondly: Investigation after reporting Decisions

This step begins based on the observations submitted by the concerned parties regarding the shortcomings that were reported to them, and through this, a final report on the investigation process is prepared, and then This report is then communicated to the legally specified parties³⁸.

A- Preparing a final report

The rapporteur prepares a reasoned report on the investigation, detailing all facts and recording final violations. The report includes a proposal regarding the case and must be accompanied by all documents and evidence used in preparing the observations³⁹.

B- Reports to the persons concerned

After receiving the initial report from the General Rapporteur, the President of the Competition Council, shall communicate this report, including the objections it contains, to the concerned persons, who are the persons specified in Article 52 of Order 03-03. These objections express the Council's conviction that there are Practices Anti-competitive and this led to the statement that this report constitutes an "indictment document", and the persons to whom the complaints are reported are:⁴⁰:

- **Interested parties:** "The term 'interested parties' includes all parties involved in the case, such as economic institutions suspected of anti-competitive practices or individuals who notified the Competition Council of these practices. The Minister of Trade is considered one of these interested parties."⁴¹.
- **Minister in charge of Trade:** The President of the Competition Council informs the Minister of Trade about the registered cases, even though he is not one of the parties to the case, but he is informed in his capacity as a representative of the public interest.
- **Interested parties:** The legislator granted the authority to file complaints to parties with a vested interest in the matter, even if they are not directly connected to the issue. This broadens the scope of notification to ensure that all relevant changes affecting the case are reviewed."

Examining the legal status of the Competition Council as an independent administrative authority clarifies who is eligible to make notifications and which employees are qualified to carry out investigations. These employees play a crucial role in maintaining market balance by performing their assigned tasks. However, their efforts only become effective once the Council has reviewed the cases and issued decisions against those violating competition rules. We will now outline the progress of the follow-up procedures before the Competition Council in the next section.

III. The second topic : the chapter In follow-up before the Competition Council

Once the Competition Council has gathered all the necessary information following the completion of investigative procedures into abusive practices, it will proceed with holding sessions to make decisions based on the available information. If investigations confirm an institution's involvement in competition crimes, the Council will decide on and enforce penalties for the perpetrators and handle any appeals.

Judicial oversight of the Competition Council's decisions and the right to appeal are among the responsibilities assigned to monitor disputes related to the application of the Competition Law. In our next section, we will present the rules for conducting the Competition Council's sessions (**The requirement the first**), and decisions issued by the Competition Council (**The requirement the second**), Then oversight of the decisions of the Competition Council and the right to appeal (**The requirement the third**).

III. 1/ The requirement the first :Rules for conducting competition council sessions

That Decide In cases affecting competition rules, These are conducted in accordance with the provisions of the Competition Law. The sessions held by the Council, where final decisions on cases are made, follow specific legal procedures that reflect the Council's administrative nature. However, some procedures are also governed by general rules, giving them a particular character. This procedural specificity is evident in the organization of the Council's sessions

(First section) Ensuring the confidentiality of sessions **Second section)**Ensuring respect for defense rights **(Section Three).**

III. 1.1/ First section : Organizing council sessions

The President of the Competition Council is responsible for organizing sessions, setting the agenda, and sending summons to the concerned parties, members, relevant rapporteurs, and the representative of the Minister of Trade. Summons are issued three weeks before each session. In the President's absence or inability to attend, the Vice-Chairman may oversee the Council's work.⁴²

The President of the Competition Council ensures the smooth conduct of the session. He determines the time allocated for interventions and has the authority to suspend the session if necessary. If the rapporteur responsible for the investigation is unable to attend, the President appoints another rapporteur to present the session report. Additionally, the session clerk prepares a report, listing the names of the parties present, which is then reviewed and signed by the Council President.⁴³

III. 1.2/ Second section: Ensuring the confidentiality of sessions

The legislator established that Competition Council sessions are secret. Executive Decree No. 11-241, which governs the Council's organization, refers to Articles 28 to 30 of Order 03-03 without specifying session confidentiality. However, Article 10 of the decree states that the Council may review files in small committees before discussing them in a public session, indicating that sessions can be public if reviewed in a committee.

According to the second paragraph of Article 28 of the Competition Law, at least 8 members must be present for the Council's sessions to be considered valid⁴⁴.

To ensure that the work of the Competition Council is considered valid and legal, the legislator requires each member to abstain from participating in the deliberation of a case if they have a personal interest in it, if there is a familial relationship up to the fourth degree with one of the parties, or if they have represented or are representing one of the parties. Additionally, members must adhere to professional confidentiality during deliberations⁴⁵.

III. 1-3 Section Three: Ensuring respect for defense rights

The Competition Law establishes several principles for conducting Council sessions, including respect regarding professional secrecy, the principle of prima facie, and the protection of defense rights. The legislator has safeguarded these principles by implementing legal guarantees throughout the session procedures, which are as follows.

III. 1-3-1 Firstly :The right to view the file

In accordance with Article 55 of Order 03-03 related to competition, the President of the Competition Council sets the date of the session after communicating the final decision to the concerned parties and the Minister of Trade. He also sends the session agenda and summons 15 days prior to the session date, informing them of their right to review the file and their notes, as well as to know the names and descriptions of the individuals whom the Council will be hearing ar.⁴⁶

III. 1.3.2/ Secondly :The right to seek the assistance of a lawyer

Article 30 of the Competition Law stipulates that the Competition Council must hear the concerned parties in the cases before it. These parties are required to submit a memorandum and may be represented by a lawyer or any person of their choice.

This includes the right of the conflicting parties to attend the session once the Council President informs them and confirms the session date. The principle of confrontation must also be upheld, allowing the parties to understand the reasons for the accusations against them, and for them to have sufficient time to prepare their defense and their written submissions, as well as their right to seek the assistance of a lawyer or Any suitable person whom these parties deem fit to defend it.

III. 2/ The requirement the second: Decisions issued by the Competition Council

After the Competition Council completes its discussion of the submitted notification, it schedules sessions to study the issue further. During these deliberations, the Council makes decisions aimed at ending practices that restrict competition and ensuring market freedom. The Competition Council issues decisions within the scope of its jurisdiction

regarding practices and actions. Therefore, we have decided to examine the conditions that must be met in the Council's decisions (**First section**), With a mention of the penalties issued by the Council (**Second section**).

III. 2.1/ First section : Conditions for the validity of the Competition Council's decisions

For the Council's decisions to be valid, a set of conditions must be fulfilled in the Competition Council's decisions, as follows:

III. 2.2.1/ Firstly :In terms of shape

After the Council's decision is issued, it is written in one original copy, kept with the session minutes by the Secretary-General, and assigned a chronological serial number. The copy is then communicated to the concerned parties for implementation.⁴⁷

III. 2.1.2/ Secondly :Decisions must be justified

"Decisions of the Competition Council must be justified. Article 19, Paragraph 01 of the Competition Law stipulates that the Council must approve or reject aggregations with a reasoned decision. Additionally, Article 44, Paragraph 03 requires that the Council's decisions be reasoned."

The reasoning or explanation for decisions must be direct, clear, circumstantial, specific and not general, allowing the competent judicial authority responsible for deciding on appeals against the decisions of the Competition Council exercises oversight over the adaptation of the facts, the application of the law, and the appropriateness of the penalty imposed.⁴⁸

III. 2.1.3/ Third :The decision must state the issue before it

The decision is based on the facts recorded in the case by the notifying party and discussed in the session by the rapporteur. Therefore, the dispute must be resolved based on the facts specific to the case at hand, rather than those from another case.

III. 2.1.4/ Fourthly :To indicate the deadlines for appeals

The Algerian legislator requires the Competition Council to specify the deadlines for appeals in its decisions. The notification letter must clearly state these deadlines for appeals."⁴⁹

III. 2.2/ Second section : Penalties issued by the Competition Council

"Penalties vary in purpose, including temporary measures to prevent irreparable damage and more severe penalties to deter practices that restrict competition."

III. 2.2.1/ Firstly :Interim measures

Article 46 of Ordinance No. 03-03 allows the Competition Council to request the plaintiff or the Minister of Trade to implement temporary measures to address restrictive practices if urgent action is needed to prevent imminent and irreparable harm to affected institutions or the public economic interest.

Temporary measures are implemented by the Competition Council before making a final decision on the merits of the case. These measures aim to halt the prohibited practice and prevent any negative consequences arising from, and precautionary measures whose aim is to avoid the occurrence of serious and irreparable damage.⁵⁰ These measures are also characterized by their urgent nature due to the nature of their goal is to prevent and eliminate practices that restrict competition.

The temporary nature of these measures ensures they prevent imminent harm without causing undue damage to the institution against which they are applied, and they are designed to avoid shifting the harm from one institution to another⁵¹.

III. 2.2.2/ secondly: Repressive measures

The Competition Council may impose various penalties depending on the scope of restrictive practices. The penalties issued by the Competition Council can be divided as follows:

A- Penalties imposed by the Council

- Financial fines taken to suppress prohibited practices that harm competition and which are imposed on natural and legal persons in the event that they are proven to be involved in using fraudulent and illegal methods that restrict the good conduct of free competition, where the fine does not exceed 12% of the turnover reached, excluding fees, or a fine amounting to at least twice the profit gained from these prohibited practices, provided that the fine does not exceed four times this profit. If the violator does not have a specific turnover, the fine cannot exceed six million dinars.⁵².

- Threatening fines The Competition Council imposes this penalty in the event of non-implementation of interim orders or measures, or delay in their implementation⁵³.
- Financial penalties are imposed for conducting operations without obtaining a license from the Competition Council.

Financial fines are imposed. on institutions that provide false or incomplete information or fail to supply the required information.

B- Criteria for assessing penalties

he Competition Council may base penalties on standards beyond those specified in the relevant articles. Article 61 bis 01 of Order No. 03-03, as amended, outlines these additional foundations, providing examples but not an exhaustive list:
⁵⁴.

- The seriousness of the practice committed.
- The damage to the economy.
- The benefits gained by the perpetrators of the violation.
- The extent of cooperation by the accused institutions with the Competition Council during the investigation and the significance of the institution's role in the market.
- Supplementary penalties.

IV. Conclusion

Referring to the principle of price freedom, which is primarily based on gradually reducing state intervention in the economic sector and allowing private individuals to set prices for goods and services in the relevant markets, the Algerian legislator has, in turn, restricted this absolute freedom. This restriction aims to maintain market control and stability while also protecting consumers. Economic activities are conducted within a specific legal framework that regulates them, with the Competition Council playing an active role.

While competition is essential and legitimate, it comes with limits and restrictions that economic operators must follow. The Competition Council oversees and enforces these rules, imposing penalties to prevent behaviors that could harm or impede competition.

To preserve constructive competition, it is essential to combat obstacles that undermine it and prevent harmful practices that violate market freedom. This involves enforcing rules against abuse of dominant positions, limiting economic dependency, and monitoring economic groupings and prohibited agreements to mitigate negative effects and prevent market control by economic agents.

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- 7-The Competition Council does not consider the cases brought before it except with regard to cases whose duration does not exceed 3 years, that is, the statute of limitations has not yet expired.
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