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Market Regulation and Protection of Economic Transactions in Algerian Law: The Competition Council as a Model

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Abstract
This study aims to investigate and analyze the legal and procedural role of the Algerian Competition Council as an essential mechanism for protecting the integrity of economic transactions and regulating the market. Employing both descriptive and analytical approaches, the study examines the Council's legal framework and historical evolution through Decrees (95-06), (03-03), and the subsequent amendment (08-12), highlighting its institutional transition into an independent administrative authority. Furthermore, the paper evaluates the Council's enforcement mechanisms (combating cartels, controlling economic concentrations, and monitoring anti-competitive practices in public procurement) along with its procedural tools (consultation, investigation, interim measures, and financial penalties). The study concludes that the Council's effectiveness in curbing market distortions and ensuring commercial transparency remains constrained by its budgetary dependence on the Ministry of Commerce and calls for enhancing its investigative autonomy.
Keywords: Competition Council; Market Regulation; Transaction Integrity; Restrictive Practices; Functional Independence.

Introduction

Corruption constitutes one of the most significant challenges facing contemporary economic systems, given its negative effects that undermine the principles of transparency and integrity and directly impact market efficiency and the proper conduct of economic transactions; The spread of corruption undermines the principle of equal opportunity among economic actors and contributes to the creation of a non-competitive environment dominated by unlawful practices that erode trust in institutions and hinder development. Corruption in the economic sphere is not limited to its traditional forms but takes shapes primarily linked to the absence of fair competition and the distortion of market rules, which negatively impacts investment attraction.

From this perspective, the Algerian legislature has worked to establish a legal framework aimed at regulating the market through the creation **of the "Competition Council"** as a central body entrusted with safeguarding the competitive system. Although the legislature elevated the legal status of this council under Law No. 08-12, describing it as an "independent administrative authority," its effectiveness in combating economic corruption continues to face structural and procedural challenges related to the extent of its organizational and financial independence, as well as its overlap with judicial and executive powers.

As for the subject of this study, although the Algerian legislature elevated the legal status of the Competition Council under Law No. 08-12, describing it as an "independent administrative authority," and granting it regulatory and enforcement powers to combat monopolistic practices, its continued organizational and budgetary subordination to the Ministry of Commerce raises a fundamental question:

To what extent are the Algerian Competition Council's current structural and procedural powers sufficient to transition it from merely "regulating the market" to "effectively combating and preventing economic corruption"?

This issue gives rise to the following sub-questions:

1. What is the legal nature of the Algerian Competition Council, and how have successive legislative amendments affected its composition and guarantees of independence?
2. How do the Council's deterrent and procedural mechanisms contribute to the detection and suppression of monopolistic practices and corruption related to public procurement?

This study is of great importance given the scarcity of research linking "competition protection rights" as a proactive mechanism to "strategies for combating economic corruption" within the Algerian legislative system. The study seeks to achieve the following objectives:

1- To demonstrate the inverse relationship between market regulation and the reduction of monopolistic practices and corruption.
2- To analyze the adequacy of the Council's investigative and deterrent tools (such as investigations and fines) in addressing emerging economic crimes.
3- To develop legislative proposals and recommendations that support the Council's effectiveness and independence.

To cover the subject from its legal and practical aspects, both descriptive and analytical approaches were employed; the conceptual and organizational framework of the Council was described, along with an analysis of the legal texts governing it (Decree 03-03 and Amendment 08-12) and their implications.

The research plan was based on dividing the study into two complementary sections:

The first section: The legal system and guarantees of the Competition Council's independence.

The second axis: The Council's procedural and deterrent tools in combating economic corruption and regulating the market.

Section One: The Legal Framework of the Competition Council and Guarantees of Independence

The study of the Competition Council's legal framework is a necessary starting point for understanding its protective and deterrent dimensions in combating economic corruption; for it is impossible to conceive of genuine market regulation and the guarantee of integrity without examining the legal nature of the body entrusted with this task and defining its characteristics and its organizational and human structure.

Section 1: The Concept of the Competition Council and Its Legislative Evolution

The Competition Council is the general competition regulatory authority in Algeria and falls under the newly established legal category known as "independent administrative authorities." It possesses legal personality and financial independence and is placed under the Minister of Trade pursuant to Executive Decree No. 11-241, as amended and supplemented by Executive Decree No. 15-79, which defines the Council's organization and operation[1] .

Pursuant to the provisions of Ordinance No. 03-03 on competition, the Council is empowered to adopt decisions, draft proposals, and issue opinions, either on its own initiative or at the request of legally qualified parties, regarding any matter or activity aimed at ensuring the proper functioning and development of competition[2] .

Section I: Jurisprudential and Legislative Definition of the Council

The Algerian legislature established the Competition Council as one of the key actors in market regulation, and its definition has undergone a significant legislative evolution through successive texts:

First: Under Decree No. 95-06:

Article 16 thereof stipulated that: *"The Competition Council shall be established to promote and protect competition; it shall enjoy administrative and financial independence, and its headquarters shall be in Algiers"[3]* .

[1] Belharith Lenda, "The Role of the Competition Council in Regulating Free Competition," Al-Ma'arif Journal, Issue 21, University of Bouira, 2016, p. 227.

[2] Keto Mohamed Al-Sharif, Competition Law and Commercial Practices in Accordance with Decree No. 03-03 and Law No. 04-02, Baghdadi House for Printing, Publishing, and Distribution, Algiers, 2010, p. 27

[3] Article 16 of Decree No. 95-06 dated January 25, 1995, on Competition, J.R., Issue 09, published on February 22, 1995.

An analysis of the article's text reveals that the Algerian legislature did not define the Council directly, but rather defined it functionally through the tasks entrusted to it (promoting and protecting competition), while affirming its central nature and its financial and administrative independence without a precise definition of its legal status, which opened the door to extensive legal debate.

Second: Under Decree No. 03-03:

The legislature addressed this gap through Article 23, which states: *"An administrative authority shall be established under the Prime Minister, referred to in the text as the 'Competition Council,' which shall have legal personality and financial independence"*[4] . Thus, the legal nature of the Council was established as an "administrative authority" subordinate to the Prime Minister, and it was explicitly granted "legal personality," of which financial independence is an inevitable corollary, given the critical importance of such independence in enabling the Council to perform its duties free from pressure by the supervisory authorities[5] .

Third: The decisive amendment under Law No. 08-12:

The legislature amended Article 23 to read: *"An independent administrative authority shall be established, referred to in the text as the 'Competition Council,' which shall enjoy legal personality and financial independence, be placed under the Minister of Commerce, and have its headquarters in Algiers*[6] .

It should be noted that the legislature preserved the administrative and authoritative nature of the Council as well as its legal personality; however, the fundamental change consisted in transferring its organizational subordination from the Prime Minister to the Minister of Trade[7] , with the addition of the term **"independent,"** which constitutes an explicit acknowledgment by the legislature of the Council's complete independence from traditional administrative structures[8] .

Section II: Characteristics of the Competition Council

The Competition Council is characterized by a set of legal features that distinguish it from traditional administrative institutions and grant it authority within the market:

First: The Nature of Administrative Authority:

This refers to the possession of sovereign prerogatives and the ability to issue binding unilateral decisions without recourse to another authority; these are powers originally delegated by the executive branch to independent administrative authorities pursuant to specific provisions and regulations. Its manifestations are evident in:

1-Establishing an authoritative character: The Council possesses actual authority to make and issue decisions and is no longer merely an advisory body, whereas decision-making authority was previously the exclusive preserve of the executive administration[9] . This authority is evident through its intervention to suppress practices that restrict competition, such as prohibited agreements, in order to protect the market through the powers of deterrence and punishment[10] .

2-Consolidation of the Administrative Nature: Successive laws (Decree 95-06, Decree 03-03, and Law 08-12) have affirmed the administrative nature of the Council. Consequently, its decisions are considered **administrative decisions subject to the principle** of legality and embody the prerogative of public authority. Nevertheless, the Council is characterized by the fact that it is not subject to any traditional supervisory oversight or to the principle of administrative hierarchy[11] .

Second: The characteristic of independence:

Independence is, by nature, a constitutional feature closely linked to the judiciary; what is meant here is that the Council is not subject to presidential oversight or the supervisory authority of the executive branch. Although Decree 03-03 omitted the term "independent" and merely described it as an "administrative authority" ([12]), the legislative framework has enshrined this independence across three levels:

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[4] Article 23 of Decree No. 03-03 dated July 19, 2003, on Competition, Official Gazette, No. 43, published on February 22, 2003

[5] Younsi Ammar, The Role of the Competition Council in Regulating the Economic Sector in Algeria, Master's thesis in Legal Sciences, Business Law specialization, Faculty of Law and Political Science, Department of Law, Arab Ben M'hidi University, Oum El Bouaghi, 2019, p. 5

[6] Article 23 of Decree 03-03 on Competition, as amended and supplemented, op. cit.

[7] Younsi Ammar, op. cit., p. 6.

[8] Ibid.

[9] Louiza Mahrouk, Amna Louiza, Judicial Review of Competition Council Decisions, Master's thesis in Law, Business Law specialization, Business Law Department, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2017, p. 8.

[10] Ashasha, Yasra, The Legal Framework of the Competition Council in Algerian Legislation, Thesis submitted to fulfill the requirements for the Master of Laws degree, Business Law specialization, Faculty of Law and Political Science, Mohamed Bachir El Ibrahimi University, Bordj Bou Arreridj, Algeria, p. 14.

[11] Haidri Samir, Independent Administrative Authorities, Journal of Administration, Vol. 19, No. 02, 2009, p. 9.

[12] Louiza Mahrouk, Louiza Amna, op. cit., p. 10.

1-Organizational independence: This is evident in the collective rules for appointing members, the duration of their four-year, continuous term, and the provision of legal safeguards protecting them while performing their duties[13] .
2-Functional and financial independence: Although the Council is attached to the Ministry of Commerce pursuant to Article 17 of Law 08-12 (amending Article 33 of Decree 03-03), which stipulates that: *"The budget of the Competition Council shall be recorded under the chapters of the Ministry of Commerce..."*[14] , this affiliation remains, in budgetary terms, subject to the general oversight rules applicable to the state budget.
3- Legal Independence: This is embodied in the Council's possession of independent legal personality, its full capacity to sue and be sued, and its freedom to establish its own internal regulations, which grants it independent financial liability, making it accountable for its actions separately from the state's structural liability[15] .

Section Three: The Historical Development of the Council's Establishment

Algeria has undergone a radical shift toward economic liberalization since the adoption of the 1989 Constitution, a trend reinforced by the 1996 Constitution, which enshrined freedom of trade and investment in Article 43. To preserve free-market mechanisms, the legislature established the Competition Council for the first time under Decree 95-06[16] . The Council has gone through three historical phases:

First: In light of Decree No. 95-06:

With the issuance of this decree on January 25, 1995, rules governing the conduct of economic agents were established following the end of the state monopoly. The establishment of the Competition Council as a market regulation mechanism[17] ; demonstrated the unsuitability of traditional courts to handle complex economic disputes, given that ordinary judges lack the technical expertise to quickly grasp complex economic phenomena, and in line with the policy of decriminalizing commercial transactions[18] .

Second: In light of Decree No. 03-03:

This decree was issued to promote economic efficiency and protect consumers from collusion among economic agents (Article 1)[19] . Unlike the previous decree, the legislature elevated the Council to the status of an "administrative authority under the Prime Minister" with legal personality and financial independence, while granting it clear regulatory and enforcement powers to regulate the field of competition[20] .

Third: In light of Law No. 08-12 and subsequent amendments:

Law No. 08-12 explicitly conferred the status of "independence" on the Council under the amended Article 23, followed by the enactment of Law No. 10-05 to strengthen the state's role in monitoring and regulating the prices of strategic goods and services with widespread consumption, in line with the protection of the general economic order[21] .

Second Requirement: Structural and Human Resources Organization of the Competition Council

The legislature has provided the Competition Council with a flexible organizational structure that combines technical expertise with administrative mechanisms to ensure effective oversight of the implementation of competition law.

Section I: The Council's Personnel and Legislative Development

The composition of the Council has undergone fundamental shifts and realignments through successive laws:

First: The Council's composition under Decree No. 95-06:

According to Article 29, the Council consisted of **12 members** appointed by the Head of State upon a joint proposal by the Ministers of Justice and Commerce, classified as follows[22] :
1- Judges (5 members): from the Supreme Court, the Court of Auditors, or other judicial bodies, proposed by the Minister of Justice[23] .
2- The category of experts (3 members): individuals known for their competence in the fields of economics, competition, and anti-fraud, without any time limit on their experience[24] .

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[13] Article 25 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[14] Article 33 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[15] Fadila Braham, The Legal Status of the Competition Council Between Decree No. 03-03 and Law No. 08-12, Master's thesis in Law, Public Business Law Section, Faculty of Law, Abdelrahman Mira University, Bejaia, Algeria, 2010, p. 38.
[16] Belhareth Lenda, op. cit., p. 227.
[17] Ashasha, Yousra, op. cit., p. 8
[18] Belhareth Lynda, op. cit., p. 228.
[19] Article 01 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[20] Keto Mohamed Al-Sharif, op. cit., p. 263.
[21] Article 23 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[22] Article 29 of Decree 08-12 on Competition, as amended and supplemented, op. cit.
[23] Younsi Ammar, op. cit., p. 12
[24] Younsi Ammar, op. cit., p. 12.

3-Professionals (4 members): Individuals with active experience in the production, distribution, services, or liberal professions sectors[25] .

Article 30 set the term of office at five years, renewable for up to two-thirds (2/3) of the members[26] , and Article 31 stipulated that the Council's president must be a judge, assisted by two deputies[27] . Their remuneration and internal regulations were established by presidential decrees (Articles 33 and 34)[28] , Article 35 also provided for the appointment of two representatives of the Minister of Commerce, one principal and one alternate, with the representative participating in the proceedings without the right to vote[29] , in addition to the appointment of a Secretary-General and two rapporteurs holding at least the rank of administrative officer (Articles 36 and 37)[30] .

Second: The composition of the Council under Decree No. 03-03:

The legislature reduced the number **of members** to **nine**, who serve on a permanent basis pursuant to Article 24, and divided them into two categories[31] :

1- The category of judges: Their number was reduced from 5 members to only 2 members who serve or have served in the Council of State, the Supreme Court, or the Court of Auditors as a judge or advisor[32] .

2- The category of legal and economic experts: This comprises **seven members** (including one member nominated by the Minister of the Interior)[33] , and the "professionals" category has been completely abolished in this regard.[33]

As for appointments, they are made by presidential decree for a renewable five-year term (Article 25), with the number of vice-presidents reduced to one, without specifying the category to which the Council president belongs[34] . Article 26 retained the provision for the participation of the Secretary-General, the rapporteurs, and the representative of the Minister of Commerce in the proceedings without the right to vote[35] .

Third: The Council's Composition Under Law No. 08-12

The legislature brought about a structural revolution in the Council's membership under Article 10 (amending Article 24 of Decree 03-03), increasing the number **of permanent members** back to **12**. The composition was entirely devoid of members from the judiciary, as follows:[36]

1-Expert Category (6 members): Holders of at least a bachelor's degree with 8 years of experience in the legal, economic, or intellectual property fields.

2-Professional Category (4 members): Practitioners in positions of responsibility holding a university degree and 5 years of experience in production, distribution, or the liberal professions.

3-Consumer Protection Category (2 members): Representatives of accredited consumer protection associations.

Regarding the mechanism for the presidency and renewal, Article 11, as amended, specifies the method for selecting the leadership: the president must be selected from the experts' category, while the vice presidents are selected from the professionals' and consumers' categories, respectively, to ensure equality ([37]). The term of office is renewed every 4 years for up to half (1/2) of the members in each category. Articles 31 and 32 delegate the determination of the remuneration and operating system to executive decrees (Decree 11-241, amended by Decree 15-79, and Executive Decree 12-204)[38] .

Section II: Administrative Management of the Competition Council

The Council's departments are responsible for independent administrative management to ensure the implementation of its decisions, as Article 4 of Presidential Decree 96-44 stipulates that the President of the Council is responsible for general administration and exercises disciplinary authority over employees[39] .

First: The Secretary General and Technical Departments:

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[25] Younsi Ammar, ibid., p. 13
[26] Article 30 of Decree 95-06 on Competition, op. cit.
[27] Article 31 of Decree 95-06 on Competition, op. cit.
[28] Articles 33 and 34 of Decree 95-06 on Competition, op. cit.
[29] Article 35 of Decree 95-06 on Competition, op. cit.
[30] Articles 36 and 37 of Decree 95-06 on Competition, op. cit.
[31] Article 24 of Decree 03-03 on Competition, op. cit.
[32] Ashisha Yousra, op. cit., p. 21
[33] Younsi Ammar, op. cit., p. 15.
[34] Article 25 of Decree No. 03-03 on Competition, op. cit.
[35] Article 26 of Decree 03-03 on Competition, op. cit.
[36] Article 10 of Decree 08-12 amending Decree 03-03 on Competition, op. cit.
[37] Article 11 of Decree 08-12 on Competition, amending and supplementing Decree 03-03, op. cit.
[38] Articles 31 and 32 of Decree 03-03 on the amended and supplemented Competition Law, op. cit.
[39] Article 04 of Presidential Decree No. 96-44 dated January 17, 1996, establishing the internal regulations of the Competition Council, J.R., No. 5, published on January 21, 1996.

The Secretary General is appointed by presidential decree and is responsible for coordinating and overseeing the Council's work by registering petitions, drafting minutes of deliberations, and preparing agendas[40] . He directly supervises four core internal departments in accordance with Article 5 of Presidential Decree 96-44[41] :

1. Procedures Division: Manages case files throughout all procedural stages, from receiving notifications and petitions via the post office and issuing acknowledgments of receipt, through notifying the parties and monitoring statutory deadlines, to drafting hearing minutes and sending decisions to the Minister of Commerce for publication in the Official Competition Bulletin[42] .

2-Department of Documentation, Studies, and Cooperation: Responsible for collecting informational materials, conducting market-related economic research and studies, managing cooperation programs with international and foreign bodies, and maintaining the archives[43] .

3-Administrative and Financial Management Department: Ensures the Council's financial and administrative independence; prepares and implements the budget; handles accounting; and manages the Council's human and material resources[44] .

4-Information Technology Department: Has become an essential pillar for modernizing the Council's activities; it is responsible for managing digital systems and technical resources to enhance operational efficiency[45] .

Second: Department Directors and Administrative Staff:

The President of the Council appoints directors to head these departments by official decree, and their positions are classified organizationally within the ranks of central administration directors or research directors in ministries[46] . They are assisted by administrative and technical staff (department heads, accountants, clerks), who, pursuant to Article 14 of the same decree, are entitled to the compensation applicable to employees of the Prime Minister's departments[47] .

Section II: The Council's Procedural Tools for Combating Economic Corruption and Regulating the Market.

The protection of free competition is one of the fundamental pillars adopted by the Algerian legislature to address structural imbalances that undermine market integrity, particularly in light of the growing prevalence of economic corruption. The Competition Council's role here is prominent as a preventive and deterrent actor responsible for monitoring anti-competitive practices and dismantling monopolistic structures that fuel economic crime.

First Requirement: Addressing Anti-Competitive Practices Related to Corruption

Economic operators sometimes seek to maximize their profits by expanding their market power through unlawful means, aiming to exclude their competitors or limit their freedom to enter the market. Such behaviors are classified as "anti-competitive practices" that disrupt the normal functioning of market mechanisms, prompting the legislature to entrust the Competition Council—as a specialized body—with the task of suppressing and investigating them ([48]).

Decree No. 03-03 on Competition, as amended and supplemented, has categorized these practices into main types that fall under the umbrella of "monopoly," the foremost enemy of competition; these include: prohibited agreements (Article 6), and the abusive exploitation of a dominant position or economic dependence (Articles 7 and 11), and predatory pricing (Article 12), as well as ex ante control of economic concentrations (Articles 15 to 22).

Section I: Combating Prohibited Agreements (Les Ententes Anticoncurrentielles)

The Algerian legislature has established a general prohibition on all forms of collusion under Article 6 of Ordinance 03-03, as amended and supplemented by Law 08-12, which prohibits: *"practices, concerted actions, agreements, and express or implied understandings* when *they aim or are likely to aim to hinder, restrict, or distort free competition…"*[49] . The text specifies examples of such *conduct*, including: restricting market entry, market sharing, controlling production, and artificially inducing price fluctuations.

To convict the Economic Authority of committing this prohibited act, three concurrent substantive elements must be present: the existence of an agreement, the proven restrictive effect on competition, and the existence of a causal link between them[50] .

First: The Element of the Prohibited Agreement:

40 Mahrouk Louiza, Amna Louiza, op. cit., p. 15.
41 Article 05 of Presidential Decree No. 96-44, op. cit.
42 Article 07 of Presidential Decree No. 96-44, op. cit.
43 Article 08 of Presidential Decree No. 96-44, op. cit.
44 Article 09 of Presidential Decree No. 96-44, op. cit.
45 Article 10 of Presidential Decree No. 96-44, op. cit.
46 Article 12 of Presidential Decree No. 96-44, op. cit.
47 Article 14 of Presidential Decree No. 96-44, op. cit.
48 Ghariga Ali, Yaqoub Tawfiq, op. cit., p. 46.
49 Article 06 of Order 03-03 concerning the amended and supplemented Competition Law, op. cit.
50 Samir Khamailia, On the Competition Council's Authority to Regulate the Market, Master's Thesis, State Transformations Department, Faculty of Law and Political Science, Doctoral School, Mouloud Mammeri University, Tizi Ouzou, Algeria, 2013, p. 41

An agreement is formed as soon as there is a meeting of minds (offer and acceptance) between legally independent economic operators (in accordance with Article 3 of Law 08-12), and the legal form of the agreement is irrelevant; It may be explicit, implicit, written, or merely consist of understandings and parallel measures (whether horizontal or vertical)[51] , as the legislative framework focuses on the existence of a "joint plan" that behaviorally aims to coordinate market positions rather than engage in actual competition[52] .

Second: The element of the agreement restricting competition:

Actual harm is not required for this element to be established; rather, it is sufficient that the objective of the agreement (whether actual or potential) is to undermine the mechanisms of competition[53] . Legal scholarship worldwide has divided into two fundamental theories regarding the assessment of this element[54] :

1-The De Minimis Threshold Theory: This theory assumes that agreements with limited or negligible impact on the market are not prohibited, a position adopted by the European Court of Justice.

2-The Rule of Reason: This is the theory adopted by the Algerian legislature in Article 9 of the Competition Law, which exempts certain restrictive agreements from the prohibition if they are intended to achieve economic progress, such as: the existence of a legislative provision justifying them, or the practice's contribution to improving operations, or enhancing the competitiveness of small and medium-sized enterprises (SMEs)[55] .

Third: The Causal Link Element:

This element requires the Competition Council to prove a direct causal link between the consultation process and the commercial collusion entered into by the parties, and the negative effects and harmful outcomes that have affected free competition in the target market[56] .

Section II: Control of Economic Concentrations (Les Concentrations Économiques)

Control over economic concentrations is a preventive mechanism that prevents economic agents from structurally penetrating the market and creating entities that monopolize economic power even before they commit any actual abusive conduct[57] . The legislature did not provide a comprehensive definition of a concentration, but merely listed its forms in Article 15 of Decree 03-03, namely the merger of two or more independent entities, or the acquisition by one economic actor of another, in whole or in part, through the transfer of ownership or securities, thereby granting it decisive influence over the market structure[58] .

First: Forms of Economic Concentrations:

Pursuant to Article 15 of the Competition Law, concentrations take two main contractual forms:

1. A contract involving a transfer of ownership or control: This includes full mergers, the purchase of all shares of a competing entity, or the acquisition of a company's tangible assets[59] .

2-Contracts involving the exercise of decisive influence: This occurs when the transaction results in a company or group of companies coming under the actual and direct control of another company, thereby causing the target company to lose its strategic independence[60] .

Second: Forms of Procedural Oversight and Board Decisions:

Supervision of economic concentrations operates through three notification channels[61] :

1-Voluntary/mandatory notification by institutions: The institutions concerned are required to notify the Council, which must rule on the matter within 3 months of the contract's conclusion.

2-Ex officio initiative by the Council: Based on the broad powers granted to it by law to monitor markets.

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[51] Horizontal agreements refer to collusion between two or more operators through an agreement whereby the operators are at the same level in the market, while vertical agreements refer to those concluded at different levels of the market—production and distribution—between a producer at a higher level and distributors at a lower level.

[52] Samir Khamaili, op. cit., p. 43.

[53] Article 06 of Law No. 03-03 on Competition, as amended and supplemented by Law No. 08-12.

[54] Khalil Salma, The Competition Council and the Regulation of Economic Activity, Master's thesis in Legal Sciences, Business Law Section, Faculty of Law, University of Mohamed Boumerdès, Algiers, 2009, pp. 68–69.

[55] Article 09 of the Competition Law, op. cit.

[56] Ben Jaloul Mohamed Barji, Thesis submitted for the Bachelor of Laws degree, Business Law specialization, Faculty of Law and Political Science, University of Oran, Algeria, 2012–2013, p. 18.

[57] Yaqoub Ben Saha, Independent Administrative Authorities in Algeria: The Competition Council as a Model, Thesis submitted to fulfill the requirements for the Master of Laws degree, specializing in Administrative Law, Department of Law, Faculty of Law and Political Science, University of Ghardaia, Algeria, 2014–2015, p. 85.

58 Article 15 of Ordinance 03-03 on Competition, as amended and supplemented, op. cit.

[59] Ghariga Ali, Yaqoub Tawfiq, op. cit., p. 53.

[60] Ibid.

[61] Yaqoub Ben Saha, op. cit., p. 86.

3-Notification from the Ministry of Commerce: particularly when the proposed merger threatens the competitive structure or holds a market share exceeding 40% of sales or purchases in a specific market.

The review of the case concludes with the Competition Council issuing a reasoned decision that takes one of three forms: either **unconditional approval** of the merger, **outright rejection** of the transaction, or **conditional approval** subject to commitments and structural adjustments that protect competition[62] .

Third: Penalties for Unlawful Mergers:

The legislature has established strict financial penalties for violations of merger regulations:

1- A fine **of** up to **7% of the turnover** (excluding fees) generated in Algeria during the last closed fiscal year, against any entity that participated in a merger without obtaining prior authorization[63] .

2- A fine of up to **5% of turnover** in the event that entities fail to comply with the structural conditions and obligations attached to the licensing decision issued by the Council pursuant to Article 19[64] .

Section III: Combating Anti-Competitive Abusive Practices

The law prohibits the abuse of economic power by large entities to prevent them from driving small businesses out of business and excluding them from the market. Decree No. 03-03 identifies three types of abuse:

First: Abuse of Dominant Position (Abus de Position Dominante):

Article 7 of the Competition Law constitutes the legal basis for prohibiting this conduct ([65]), and the violation requires two conditions:

1- Proof of a dominant position: This is established when an economic entity possesses the power to operate in the market independently of its competitors' strategies, without its customers or suppliers being able to find viable alternatives[66] . To define dominance, Article 2 of Executive Decree No. 00-314 sets out quantitative and qualitative criteria, including: current market share compared to competitors, technical and legal advantages, effective contractual ties, and the advantage of geographical proximity[67] .

2-Occurrence of Abusive Conduct: A takeover or complete monopoly is not punishable in and of itself unless accompanied by abusive conduct; Article 7 specifies forms of such abuse (such as: price fixing, production curtailment, and the imposition of unequal and discriminatory terms on partners)[68] .

As for penalties and practical enforcement, the law stipulates a financial penalty not exceeding 12% of the offending entity's annual turnover, along with an order to cease practices restricting competition[69] . In accordance with this, the Competition Council issued a landmark decision in 1999 against the National Corporation for Electronic Industries **(ENIE – Sidi Bel Abbes Unit)**, ordering it to cease its monopolistic practices in violation of Article 7 and imposing a fine of **4,348,560.00 DZD[70]** .

Second: Prohibition of the Abuse of Economic Dependency

Article 11 prohibits an undertaking from exploiting the economic dependence of another undertaking (customer or supplier) that has no equivalent alternative in the event of its refusal to submit to the imposed commercial conditions[71] . The Council uses precise criteria to establish dependence, such as the absence of a commercial alternative and the concentration of distribution networks.[72] The law does not require a written contract to establish dependency; rather, it is sufficient to prove an "effective commercial relationship" (Article 3).[73]

As for forms of abuse and their penalties, the most significant include the sudden termination of commercial relations due to a customer's refusal to accept unlawful terms, or the imposition of discriminatory and unfair sales conditions aimed

[62] Bouaroua Youssef, Independent Administrative Authorities in Algeria with Judicial Jurisdiction, Master's thesis, Administrative Law specialization, Faculty of Law and Political Science, University of Qasdi Merbah Ourega, Algeria, 2012–2013, p. 25

[63] Article 61 of Ordinance 03-03 on Competition, as amended and supplemented, op. cit.

[64] Article 62 of Ordinance 03-03 on Competition, as amended and supplemented, op. cit.

[65] Ben Jaloul Mohamed Barji, op. cit., p. 23.

[66] Nabil Nasri, The Legal Status of the Competition Council Between Decrees 95-06 and 03-03, Master's thesis in Law, Business Law Department, Faculty of Law, University of Tizi Ouzou, 2003–2004, p. 80.

[67] Article 02 of Executive Decree 2000-314 defining the criteria for determining economic dominance as well as the criteria for practices described as abusive in a position of dominance

[68] Article 7 of Decree No. 03-03 on Competition, as amended and supplemented; see above.

[69] Article 56 of Decree No. 03-03 on Competition, as amended and supplemented, op. cit.

[70] Decision No. 99 Q 01 issued by the Competition Council on June 23, 1999, concerning practices committed by the National Corporation for Electronic Industries (Sidi Bel Abbes Unit).

[71] Article 11 of Decree 03-03 on Competition, as amended and supplemented, op. cit.

[72] Yaqoub Ben Saha, op. cit., p. 91.

[73] Article 03 of Decree 03-03 on Competition, as amended and supplemented, op. cit.

at lowering prices, thereby infringing on the customer's commercial freedom[74] . Such abuse is punishable by a fine of up to **12% of the** offending entity's **turnover**[75] .

Third: Prohibition of Predatory Pricing (Prix Prédateurs):

The aim of predatory pricing (Article 12 of the Competition Law) is to eliminate competitors by inflicting losses they cannot sustain financially, so that the monopolist, after eliminating them, can raise prices again and monopolize the market[76] ; This is economically described as "an island of losses in a sea of profits"[77] . For this violation to occur, the following conditions must be met: the prices must be publicly announced; the price must be lower than the costs of production, distribution, and marketing; the sale must be directed at the end consumer; and there must be evidence of an intent to restrict competition[78] .

As for legal discrimination and its penalties, a distinction must be made between arbitrary price reductions and "selling at a loss"; The former applies to goods produced or processed by the economic entity and targeted at the consumer (Article 12), while selling at a loss applies to goods resold in their original condition without alteration[79] . The text of Article 12 is limited to goods and products, excluding services. This practice is punishable by a fine of up to 12% of turnover[80] .

Section IV: Regulating Competition in Public Procurement

Public procurement is considered a fertile ground for corruption and favoritism; therefore, the legislature has incorporated this vital area into the jurisdiction of the Competition Council to ensure integrity and the sound management of public funds[81] . Procurement procedures are based on the principles of free access to public tenders, equal treatment of bidders, and transparency of procedures[82] . Furthermore, Article 9 of the Law on the Prevention and Combating of Corruption (06-01) enshrines the requirement that public procurement be based on fair competition.

First: Justifications for Applying Competition Law to Public Procurement:

The subjection of contracts to the oversight of the Competition Council stems from several considerations, including: ensuring administrative impartiality; prohibiting collusion and agreements among contractors to artificially raise prices; and protecting public funds through the rational use of resources[83] . This subjection has gone through two phases: The non-subjection phase (2003–2008), followed by the phase of effective integration under Amendment 08-12, which subjected contracts to the provisions of Article 6 regarding prohibited agreements.

Second: The temporal and substantive scope of the Council's jurisdiction over transactions:

Article 2 of Decree 03-03 stipulated that the provisions of the Competition Law apply to public contracts ([84]), and the legislature limited this jurisdiction to the following criteria:

1- Procedural and temporal scope: The Council's jurisdiction begins on the date of publication of the tender announcement (request for proposals) and extends until the final award of the transaction. The "implementation phase" falls outside its jurisdiction because the transaction is settled with a single contractor, eliminating competition, and because the administration acts in the capacity of a public authority[85] .

2-The substantive criterion: The contract is subject to competition law as long as it relates to a purely economic activity and is free from public authority privileges; however, if the contracting party exercises sovereign privileges, the contract falls outside the scope of competition law and is subject to administrative law and the jurisdiction of the administrative courts[86] .

Section Two: Procedural Mechanisms of the Competition Council for the Prevention and Combating of Corruption

The Council intervenes through a set of procedural mechanisms that combine preventive guidance and field investigations, culminating in the imposition of sanctions.

Section One: Consultation as a Mechanism for Preventing Corruption

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[74] Article 11 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[75] Article 56 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[76] Article 12 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[77] Nasseri Nabil, op. cit., p. 98.
[78] Yaqoub Ben Saha, op. cit., p. 92.
[79] Yaqoub Ben Saha, op. cit., p. 92.
[80] Article 56 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[81] Mona Maklati, "The Role of the Competition Council in Regulating Competition in Public Procurement under Algerian Law," Annals of the University of Guelma for Social and Human Sciences, Vol. 17, No. 01, University of 8 May 1945 Guelma, Algeria, 2023, p. 87.
[82] Article 5 of Presidential Decree No. 15-247, dated September 16, 2015, regulating public procurement and public service contracts, Official Gazette, No. 50, published on September 20, 2015.And Article 5 of Law No. 23-12, dated August 5, 2023, establishing the general rules governing public procurement, Official Gazette, No. 56, published on August 6, 2023.
[83] Mona Maklati, op. cit., pp. 91–92.
[84] Article 02 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[85] Mona Maklati, op. cit., p. 102.
[86] Ibid.

The legislature has granted the Competition Council broad advisory powers aimed at rationalizing the market and proactively protecting it from commercial misconduct and corruption[87] ; these powers are divided into two types:

First: Optional Consultation:

The Council expresses its opinion on any matter it deems to affect the market. Pursuant to Article 38, judicial authorities hearing disputes related to practices that restrict competition may consult the Council to seek its technical opinion after hearing the parties[88] . The Council's jurisdiction extends to adjudicating disputes arising between businesses and consumers (such as the offense of selling at a loss under Article 12), given that the impact of the offense affects the market structure as a whole[89] . Furthermore, the legislature highlighted the government's role as a public authority in ensuring respect for the principle of free competition through Article 36 of Decree No. 08-12 dated June 25, 2008[90] ; Thus, competition law can be considered a law that functions as a symmetrical tool ensuring absolute balance and equality among all economic actors without favoritism[91] .

Second: Mandatory Consultation:

Article 36 of Decree 03-03 requires the executive branch to consult the Competition Council on draft legislative and regulatory texts related to competition, particularly those aimed at: subjecting market entry to quantitative restrictions, granting exclusive rights, imposing special conditions for the production and distribution of services, or establishing uniform practices for terms of sale[92] . The Council has the authority, at the request of the Minister of Commerce, to take exceptional measures to address excessive price increases and ensure supply[93] .

With regard to the dilemma of organizational subordination and the replication of structures, the idea of limiting independence is evident in the legislature's assignment of certain regulatory powers "to" the executive branch; The Competition Council was placed under the Minister of Commerce pursuant to the 2008 amendment, having previously been under the Prime Minister ([94]), which follows the same structural approach as that adopted by the National Authority for the Prevention and Combating of Corruption (an independent authority placed under the President of the Republic pursuant to Article 18 of its law). Furthermore, the presence of a permanent representative of the Minister of Commerce (without voting rights) in the Council's proceedings under Article 26 of Law 08-12 constitutes a mechanism of direct administrative oversight that undermines the philosophical concept of complete independence from the central administration.

Section II: Investigation as a Means of Uncovering Corrupt Practices

The Competition Law regulates the investigation procedures for complaints accepted under Articles 50 through 55 of Decree 03-03, and the investigation process proceeds through two stages:

First: The Preliminary Investigation Phase:

This stage aims to investigate and gather evidence to prove practices that restrict competition ([95]). Article 49 bis of Decree 03-03 exclusively specifies the persons authorized to conduct investigations, namely: officers and agents of the judicial police ( ), surveillance personnel affiliated with the Ministry of Commerce, tax administration officials, as well as the General Rapporteur and the Rapporteurs of the Competition Council[96] . The Rapporteurs are authorized to examine and seize all documents and records necessary for the investigation; they may not be refused access on the grounds of "professional secrecy" (Article 51), and they may compel any entity to provide information within a specified timeframe[97] .

Second: The Adversarial Investigation Phase (L'Instruction Contradictoire):

Upon completion of the investigation, the rapporteur is required to prepare a preliminary report setting forth the facts and findings recorded. The Chairman of the Council shall notify the parties concerned and the Minister of Commerce, who may submit written comments within three months (Article 52)[98] . The rapporteur has the authority to question the

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[87] Alian Bouzian, "Legal Protection of Freedom of Competition from Anti-Competitive Practices by Independent Administrative Bodies and Judicial Authorities," presentation at the 7th National Forum on the Regulation of Economic Activity, 10–11 October, Moulay Tahar Saida University, Algiers, p. 10.
[88] Keto Mohamed Al-Sharif, "Consumer Protection from Anti-Competitive Practices," Al-Idara Journal, No. 23, 2002, p. 53.
[89] Kammousi Houari, "The Competition Council," Encyclopedia of Law and Political Science Journal, Vol. 01, No. 01, University Supplement, Qasr al-Shallala, Tiaret, Algeria, 2023, p. 87.
[90] Article 36 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[91] Kammousi Houari, op. cit., p. 89.
[92] Article 36 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[93] Article 34 of Ordinance 03-03 on Competition, as amended and supplemented, op. cit.
[94] Article 23 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[95] Ashisha Yousra, op. cit., p. 67.
[96] Article 49 bis of Decree No. 03-03 on Competition, as amended and supplemented, op. cit.
[97] Article 51 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[98] Article 52 of Decree 03-03 on Competition, as amended and supplemented, op. cit.

parties and hear witnesses in official minutes, and those being heard have the right to be assisted by legal counsel (Article 53). The investigation concludes with the submission of a reasoned report detailing the violations committed and proposing corrective or regulatory measures[99] . The Chairman of the Council shall notify the parties and the Minister of the final report to allow for comments within two months prior to setting the date for the formal hearing[100] .

Third: Procedural Consequences of the Investigation:

The investigation has significant legal implications; the Council may take **provisional safeguard measures** under Article 46 if it is established that the practices threaten the national economy with immediate and serious harm, with a clear causal link[101] , The investigation also results in the granting of formal authorizations for consolidation operations (Articles 17 and 18) or a declaration of non-intervention and authorization of positive practices (Articles 8 and 9).

Section III: Imposing Fines as a Deterrent Mechanism to Curb Corruption

The Competition Council possesses quasi-judicial powers enabling it to issue reasoned orders imposing deterrent financial penalties on entities violating competition principles and engaging in unlawful mergers (Article 45 of Decree 03-03)[102] . Fines vary depending on the nature of the violation:

1-Penalties for Unlawful Concentrations: Article 61 penalizes transactions carried out without authorization with a fine of up to **7% of the** annual **turnover** (excluding fees) generated in Algeria[103] . This penalty applies without exception if the concentration aims to control a market share exceeding 40%[104] .

Since some companies had not completed a full fiscal year to calculate the penalty, the legislature addressed this through the 2008 amendment to Article 62 bis, establishing that the fine shall be calculated based on the turnover achieved **"during the period of actual activity carried out"[105]** , with the exception of licensed consortia that serve operations or support small and medium-sized enterprises in accordance with Article 19)[106] .

2-Penalties for Practices Restricting Competition: Article 56 of Law 08-12 specifies the financial penalty applicable to the commission of prohibited practices set forth in Article 14 of this decree; **not exceeding 12% of the** total **turnover** achieved in the last closed fiscal year, or a fine equivalent to at least twice the amount of illicit profits obtained as a result of economic corruption[107] .

Conclusion:

Based on the analysis conducted in this study, we conclude that the relationship between competition protection and the fight against economic corruption is organic and complementary; the disruption of free market mechanisms constitutes the infrastructure upon which corrupt entities rely to entrench monopolies and exploit economic influence. From this perspective, the Competition Council's intervention is no longer merely a regulatory luxury, but has become a strategic necessity and a legislative imperative for safeguarding the integrity of economic transactions and protecting public funds.

The study has demonstrated that protecting the market from anti-competitive practices essentially dries up the sources of corruption, which highlights the Competition Council as a pivotal actor possessing the necessary regulatory, preventive, and deterrent tools to restore the structural balance of the national economy, despite the institutional and procedural constraints that continue to curb its full effectiveness.

Through this study, we have reached a set of conclusions, namely:

1. **Incomplete structural transformation and functional subordination:** Although the Algerian legislature granted the Competition Council the status of an "independent administrative authority" under Law No. 08-12, its organizational affiliation with the Ministry of Commerce and the inclusion of its budget as sub-sections within the Ministry's budget deprive it of financial autonomy and create indirect economic and administrative subordination to the executive branch.
2. **The Direct Correlation Between Corruption and Monopoly:** The study demonstrated a close positive correlation between practices that restrict competition (particularly secret agreements and collusion in public contracts) and the growth of economic corruption networks; this makes market regulation and ensuring its transparency the first and preventive legislative line of defense for protecting public resources.
3. **The reduction in the Council's membership and its judicial impact:** The removal of judges from the Council's membership under Amendment 08-12, and their complete replacement with experts and professionals, to weaken the

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[99] Article 54 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[100] Article 55 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[101] Article 46 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[102] See Article 45 of Decree 03-03 on Competition, as amended and supplemented, op. cit.
[103] Article 61 of Decree No. 03-03 on Competition, as amended and supplemented, op. cit.
[104] Gamoussi Houari, op. cit., 98.
[105] Article 62 of Decree No. 03-03 on Competition, as amended and supplemented, op. cit.
[106] Article 21 bis of Decree No. 03-03 on Competition, as amended and supplemented, op. cit.

Council's "quasi-judicial" character and the legal drafting of its deterrent and punitive decisions, although this measure—on the other hand—enhanced its technical and economic expertise regarding market conditions.

4. **The normative conflict with constitutional rights and guarantees:** It has become apparent that the use of expanded investigative tools and investigative actions—such as allowing Council officials direct access to bank records and commercial documents without requiring safeguards or prior, explicit judicial authorization—raises concerns about infringing upon the right to privacy and the sanctity of confidentiality, which are protected by both the Constitution and international law.
5. **Limitations in the temporal and substantive scope of oversight:** The Competition Council plays a "secondary protective" role; While its focus is on ensuring the free functioning of market mechanisms, limiting its jurisdiction to public contracts from the date of announcement until the final award—without extending it to the implementation phase—has rendered the outcomes of this oversight insufficient to track corruption that creeps in through addenda and price adjustments.

The following are some proposals:

Based on the above findings and conclusions, we present a set of recommendations and proposals aimed at strengthening the institutional and procedural performance of the Competition Council in combating economic corruption:

1- **Full financial and administrative autonomy for the Council:** We recommend structurally separating the Competition Council's budget from the Ministry of Commerce and establishing it as an independent budget directly registered with the Prime Minister's Office or the Presidency of the Republic, while excluding representatives of the executive branch from its membership to ensure complete impartiality and transparency toward all stakeholders (particularly state-owned public institutions).

2- **Reinstating Judges to the Membership on a Permanent Basis:** We propose amending Article 24 of Decree No. 03-03 to ensure the permanent reintegration of judges from the Supreme Court and the Council of State into the deliberative body; this is to fortify the Council's deterrent decisions and fines, ensure the quality of their legal drafting, and prevent their continuous annulment before the administrative courts.

3- **Restricting investigative powers and protecting bank secrecy:** Establishing legislative controls and clear, specific criteria for the concept of "suspicious financial transactions," and requiring prior judicial authorization from the competent judicial authorities before the banking system allows Council officials to access accounts and records; striking a balance between the requirements of economic regulation and the protection of individual and commercial freedoms.

4- **Strengthening the procedural powers of consumer protection associations:** Activating the role of the two members representing consumer protection associations within the Council's composition, and legally granting them the authority to issue "direct notifications" and file lawsuits independently regarding monopolistic practices and collusion that directly harm purchasing power, rather than limiting their role to an advisory capacity.

5- **Establishing immunity and leniency programs:** We propose incorporating a "deferred immunity system" (or leniency programs) into Algerian legislation to encourage economic actors involved in secret agreements (cartels) to report them and provide evidence to the Council in exchange for immunity or a reduction in severe fines (which can reach 12%), a mechanism that has proven successful globally in dismantling corruption networks.

6- **Expanding oversight to cover the transaction execution phase and digital markets:** We recommend amending Article 2 of Decree 03-03 to extend the Council's oversight to the transaction execution phase (add-ons and inflated invoices), while equipping the Council with artificial intelligence systems and digital investigation algorithms (Data Analytics) to monitor abnormal indicators and detect "silent algorithmic collusion" in modern digital markets.

Based on the detailed footnotes I have attached, I have cleaned the data, removing duplicate citations and procedural phrases such as (ibid., op. cit., p...), to produce a final, reliable list of references.

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