

A Legal Perspective on the Role of the Competition Council in Achieving the Balance Between Market Efficiency and Consumer Protection

رؤية قانونية لدور مجلس المنافسة في تحقيق التوازن بين كفاءة السوق وحماية المستهلك

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Received: 10/01/2025

Accepted: 19/03/2025

Published: March/2025

الملخص:

أنشأ المشرع الجزائري مجلس المنافسة كسلطة إدارية مستقلة مكلفة بتنظيم السوق ومواجهة الممارسات المقيدة للمنافسة، استناداً إلى المادة 23 من الأمر 03-03 المتعلق بالمنافسة المعدلة بالمادة 09 من القانون 08-12. وفي هذا الإطار، يتمتع المجلس بصلاحيات واسعة وأدوات مرنة تمكنه من التدخل الفعال لمواجهة الممارسات الاحتكارية، وتعزيز التنافسية الاقتصادية، بالإضافة إلى تحسين كفاءة السوق وحماية حقوق المستهلك بما يضمن بيئة اقتصادية سليمة ومستدامة. ومع ذلك، لا تزال هناك تحديات تتعلق بمدى استقلاليته وفعاليتيه وبين فرض القوانين التنظيمية، فضلاً عن الحاجة إلى تعزيز الشفافية في نشر قراراته وضمن تنسيق أكبر بينه وبين الجهات التنظيمية الأخرى. لذلك، يعدّ تعزيز الإطار القانوني لضمان استقلالية المجلس وتحسين آليات نشر قراراته من الخطوات الأساسية لتعزيز دوره الرقابي.

الكلمات المفتاحية: مجلس المنافسة، سلطة، ضبط السوق، حماية المستهلك، الممارسات المقيدة للمنافسة.

Abstract:

The Algerian legislator established the Competition Council as an independent administrative authority tasked with regulating the market and addressing anti-competitive practices, pursuant to Article 23 of Ordinance 03-03 on competition, as amended by Article 09 of Law 08-12.

In this context, the Council is endowed with broad powers and flexible tools that enable it to intervene effectively in combating monopolistic practices, promoting economic competitiveness, improving market efficiency, and safeguarding consumer rights, thereby ensuring a sound and sustainable economic environment. However, challenges remain regarding its actual independence and effectiveness in enforcing competition laws, as well as the need for greater transparency in publishing its decisions and ensuring better coordination with regulatory bodies. Strengthening the legal framework to secure the Council's autonomy and improving decision publication mechanisms are essential steps to enhance its regulatory role.

Keywords: Competition Council, authority, market regulation, anti-competitive practices,

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consumer protection.

Introduction:

Significant reforms were made to Algeria's economic system after the failure of its predecessor, which lacked human initiative and saw the state monopolize most economic enterprises. The objective of these modifications is to strengthen and streamline the process of economic integration on a regional and global scale. The origins of these reforms can be traced to the late 1980s, more precisely to the proclamation of Law No. 88-01 on January 12, 1988, which includes the general laws governing public economic enterprises, and later laws pertaining to commerce and industry. At this point, the economy was shifting from a directed to a free-market model, and the state was looking for ways to rationalize its policies across the board. It did this by creating autonomous administrative bodies to carry out its policies and programs.

While a market economy does not necessarily mean no government agency, it does mean that the state must maintain regulations that encourage competition among various economic actors in order to keep the market functioning well. Legal norms and economic game rules are now the extent of the state's authority. Restoring basic economic and financial balances and clarifying the relative roles of the state and the market in attaining objectives, rather than activity monopolization, have been contributions of reform efforts. The competition-related Order No. 03-03 was issued, which bolstered the program. The legislation establishes the Competition Council as a market economic regulator and creates the framework for competition law.

The aim of the study:

To better understand the Competition Council's mandate to protect consumers, regulate the market, and maintain competition, this study sought to elucidate that authority.

Research Issue:

We describe the problem's features inside this framework, and the following question is at its heart: **How effective is it to the Competition Council as an economic regulatory body in safeguarding the market and consumers against anti-competitive practices?**

Study Hypotheses:

- The most preferred and main way for the Competition Council to address anti-competitive conduct mentioned in Article 14 of Ordinance 03-03, as amended and supplemented, regarding the Competition Law is through its advising jurisdiction.
- This lawmaker from Algiers supports the competition council's proactive role in protecting institutions' credibility and giving them a chance to change before facing penalties, as outlined in Article 34 and later articles of the revised Ordinance 03-03.
- With its controversial authority, the Competition Council can keep an eye on how institutions engage in economic activity and whether they illegally boost their competitiveness.

Methodology Adopted for the Study:

The descriptive method was used to grasp the concepts and features linked to the Competition Council, while the analytical method was used to understand various competition

law texts and to develop relevant provisions. This was done to address the problem.

Study Framework:

There are two main parts to this research. Part one covers the idea and administrative structure of the Competition Council. The second, on the other hand, will go over the Competition Council's former powers and processes.

1-The Idea and Organizational Framework of the Competition Council

The Algerian legislature created the Competition Council as an executive body to oversee economic matters, with a focus on establishing fair conditions for market share and open competition. First, we must define and explain the notion of the Competition Council, then its nature and administrative structure, before we can go into its defined competencies.

1.1-The Competition Council's Core Idea

Among the Competition Council's primary responsibilities is the distribution of equitable market opportunities and the establishment of equitable competition procedures. To fully grasp the Competition Council, one must investigate its definition (First section) and its legal status (Second section).

First section: Definition of the Competition Council

The Algerian legislature set up the Competition Council as a regulatory body in accordance with the Competition Law, Ordinance No. 95-06, which was later changed and substituted by Ordinance No. 03-03. This was done for economic reasons. The Competition Council is defined in Article 23 of this ordinance as an independent administrative body with legal personality and financial autonomy. It is created under the Prime Minister's office and recognized as a central authority with its headquarters in Algiers.

A change to this ordinance, however, transferred authority from the Competition Council to the Ministry of Commerce.

From what we can tell, the Competition Council is marked by the following traits:

- The entity in question is a public legal body.
- It is an administrative body that regulates the economy.
- A central authority with its own identity and its own money.¹

Second section: Legal Nature of the Competition Council

An independent administrative entity, the Competition Council is defined by Ordinance No. 03-03, as amended and supplemented, which deals with competition. It is more than just an advisory body; it can actually make decisions that fall within the purview of the executive. Economists have always looked to the executive branch, specifically the Ministry of Trade, for guidance on economic policy. To prevent any kind of manipulation of the free market system, such as anti-competitive agreements or exploitation of market supremacy, the Competition Council was previously entrusted with this responsibility. That leaves the Competition

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Council as the regulatory agency with market-related responsibilities.

The Competition Council enjoys special powers as a public authority because its decisions and activities are deemed to be administrative acts or legal acts. Since the executive branch, and the Ministry of Trade in particular, has been relieved of many market regulation duties and transferred to the Competition Council, an autonomous administrative entity, the former has been entrusted with various regulatory functions. Among these responsibilities is the management of the service, distribution, and production processes. The Competition Council's power is further demonstrated by its enforcement capabilities, and punishment, which were formerly the purview of the courts. Incarceration or monetary fines are the consequences imposed by the Council for illegal agreements and the misuse of powerful positions. It does this by issuing decrees that either prohibit or punish anti-competitive activities.²

All of the Council's official and substantive acts are of an administrative nature, which it upholds by maintaining its administrative character. Article 02 of Executive Decree No. 11-241, dated July 10, 2011, and Article 23 of Ordinance No. 03-03, both of which describe the organization and functioning of the Competition Council, affirm this³, Executive Decree No. 15-79, dated March 8, 2015, revised and supplemented.⁴ These statutes create the Competition Council, an autonomous administrative entity that reports to the Ministry of Trade, and grant it the authority to make its own decisions on its own finances and legal personality.

Things done by the Competition Council are considered administrative decisions and acts⁵, administrative courts have the authority to examine their legitimacy through challenges to their validity, such as annulment actions or allegations of abuse of power. Ordinance No. 03-03 includes a clear provision for appealing merger decisions to the State Council in Article 19. The Competition Council may face challenges to any of its decisions—not only those pertaining to mergers—in the administrative court because it is an administrative entity. According to the State Council's organizational chart, mandate, and powers as stated in Organic Law No. 98-01 and the Civil and Administrative Procedure Code, this is founded on organic standards.⁶

1.2-Administrative Organization of the Competition Council

In this section, we will take a look at the administrative structure of the Competition Council, breaking it down into its parts and how they work..

First section: Structure of the Competition Council

The organizational framework of the Competition Council is defined in Article 24 of Chapter Three of Ordinance No. 03-03. It is composed of two groups of people: the members and the second group, which includes the rapporteurs and the representation from the ministry of commerce. Ordinance No. 03-03's Article 24 establishes the nine-person Competition Council, chosen by executive order to serve for a term that can be extended every five years⁷ According to Article 25 of the identical regulation, their terms conclude in a similar manner.

- The State Council, the Supreme Court, or the Competition Council are all entities where

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two members are required to hold or have held the position of judge or advisor.

- Experts in law and economics from the domains of distribution, competition, and consumption make up seven of the members, with one representative appointed at the suggestion of the Secretary of the Interior.

The composition underwent a substantial change following the amendment of Ordinance No. 03-03 by Law No. 08-12. Notably, judges were removed, turning it into a non-judicial body that aligns due to its administrative nature. However, the politician then amended it such that the number of members is even rather than odd.⁸

Second section: Functioning of the Competition Council

Articles 27–33 of Ordinance No. 03-03 detail the functions of the Competition Council, as amended by Laws No. 08-12 and No. 10-05. According to Article 27 of Ordinance No. 03-03, it is necessary to submit an annual report to the relevant legislative bodies, as well as the Prime Minister and the Minister of Trade. The President of the Council has a responsibility to submit the report as their representative.

This report is handed over to the authorities in Algeria approximately one month later after it appeared in the Official Journal of the People's Democratic Republic. Any media outlet is free to publish it in its whole or with an excerpt.

Law No. 08-12, article 13, revised this article by keeping the same provisions but adding an activity report, as described in article 49 of the ordinance. The responsibilities of the President and Vice President in overseeing the Council's sessions are addressed in Article 28. In the president's absence, the vice president steps in to manage, however in their capacity as public speaker, they are constrained. The document goes on to say that the Council meetings are private and may only be legally held when all eight members are present. This raises the question of whether or not an even number of members can make the President's vote decisive. If the number of valid votes is lower than 50%, then a decision is made by a simple or relative majority.⁹

Decrees issued by the executive branch determine the compensation of members of the Competition Council and the parameters within which the council functions. All members of the Competition Council are prohibited from taking part in discussions pertaining to matters involving relatives up to the fourth degree as per the amendment to the law known as Law No. 08-12. And lastly, members of the Competition Council are not allowed to do anything other than their official duties and must keep their work a secret. Decrees issued by the executive branch determine the compensation of members of the Competition Council and the parameters within which the council functions. All members of the Competition Council are prohibited from taking part in discussions pertaining to matters involving relatives up to the fourth degree as per the amendment to the law known as Law No. 08-12. And lastly, members of the Competition Council are not allowed to do anything other than their official duties and must keep their work a secret.

2-Powers of the Competition Council and the Procedures Followed Before It

In order for the Competition Council to carry out its mandate, it must use the authority it has been given under the Competition Law. This paper will discuss its competencies and the procedures followed before it.

2.1-Authority of the Competition Council

The Algerian parliament has granted extensive authority to the Competition Council, which it formed to promote and protect competition. But it can only accomplish this by using the power bestowed upon it by Ordinance No. 03-03, as amended and expanded. One of its functions is:

First section: Advisory Authority of the Competition Council

When formulating proposed rules and regulations pertaining to competition, lawmakers seek the counsel and executive authority of the Competition Council. It has the authority to make recommendations and serves as an authority on competition issues.¹⁰ The Competition Council is a resource for all stakeholders in the state's economic and social affairs; anybody can seek its assistance on issues pertaining to competition, and its advisory consultations aren't restricted to texts pertaining to legislation or regulations. Since the majority of economic operators do not have a firm grasp of the many facets of competition law and regulation, they turn to experts for guidance on any subject pertaining to this area. As the body responsible for protecting and promoting competition, the Competition Council has the authority to provide a variety of viewpoints on any topic pertaining to competition, which helps the Council achieve its purpose of encouraging a spirit of healthy competition.

In response to requests from interested parties, the Algerian legislature has authorized the Competition Council to provide two distinct kinds of legal consultations:

A. Optional Consultation:

The lawmaker has given some organizations the chance to talk to the Competition Council, so they may decide whether to do it or not. Ordinance No. 03-03 lays out the framework for this sort of consultation in Articles 35–38¹¹, outlining the parties that are eligible to request voluntary consultation with the Competition Council at any time, either voluntarily or in response to a need to avoid any unforeseen actions that could violate competition regulations.

B. Mandatory Consultation:

In contrast to voluntary consultation, legislative or executive authorities are required to consult the Competition Council on all matters pertaining to or potentially affecting competition, including the draught of laws or executive decrees. This obligation is outlined in

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Article 36 of the same ordinance¹², addressing:

- In doing so, they are limiting access to some markets or making it more difficult to engage in certain occupations.
- Certain areas or activities are subject to their exclusive pricing.
- We set unique parameters for manufacturing, distributing, and providing services.
- Within the context of sales situations, I am outlining standard procedures.

Ordinance No . 03 - 03, as revised by Law No . 08 - 12, defines strategic products and services, and the government is required to seek advice from the Competition Council before setting pricing for these items. (albeit the list of strategic products and services is vague in the law). Particularly in circumstances of severe price spikes due to market disturbances, natural disasters, persistent supply issues in a specific industry or area, or natural monopolies, extraordinary measures may be necessary to address or resolve such instances.¹³

Second section: Dispute Resolution Powers of the Competition Council

A company's "disputable powers" are the legal means by which it might enhance its competitiveness at the expense of its competitors and, in the long run, the market as a whole.¹⁴

Within the framework of complaints received or investigations undertaken, the Competition Council has quasi-judicial powers to address illegal economic practices, such as predatory pricing, abusive market dominance, prohibited agreements, and other anti-competitive practices. In addition, the Council is in charge of monitoring economic concentrations and making decisions on whether or not to authorize mergers and acquisitions.¹⁵

A. Suppression of Anti-Competitive Agreements:

Suppressing and outlawing restrictive agreements is a priority according to the Competition Law. In order to prevent, limit, or disrupt unlimited competition within the same market or a significant part of it, the legislator has outlawed all practices, manufactured behaviors, and express or implicit agreements in Article 06 of Ordinance 03-03. Some have characterized these forbidden agreements as follows: "any coordination in behavior between enterprises or any implicit or explicit contract or agreement, regardless of its form, if its subject or its effects are probable to inhibit, limit, or skew competition." However, the legislator did not define them.

In particular, the lawmaker emphasized the prohibition of the following types of agreements, which aim to:

1. Limit who can enter the market or operate a company.
2. Cut off or restrict production, investment, marketing routes, or technological advancement; partition markets or sources of supply.

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3. Problems with cost-benefit analysis caused by market laws that encourage artificially high or low prices.
4. Put different requirements on trading partners for the same services, reducing their competitiveness.
5. Cause agreements with partners to be finalized, but only when they accept supplementary services that are either irrelevant to the contract's topic or go outside business standards.

Authorize the distribution of government contracts to individuals engaged in restrictive endeavors.

Article 6's prohibition on agreements and practices is not inherent but becomes relevant when the practice's goal or possible consequences limit market competition. Thus, for an agreement to be considered illegal, it must result in a limitation of competition.

The Algerian government is increasingly looking favorably on small and medium-sized businesses, so they have decided to exempt some agreements and practices from prohibition. These have the ability to boost economic and technological development, create jobs, and give these businesses a leg up in the market.

B. Suppression of Abusive Practices (Economic Power):

Companies can often use their financial might to dominate a market for goods or services without reason, which is bad for competition. Harassment of economic dependence, predatory pricing, and exploitation of a dominant economic position are among the most heinous of these practices.

C. Exploitation of Dominant Economic Position:

Any form of abuse stemming from a dominating economic position in the market is forbidden under Ordinance 03-03, specifically Article 7. In order to make sure that abusive activities like these are illegal, the legislator listed a number of them. These methods can only be outlawed if businesses are in a dominating position and abuse their power.

If a business is able to establish itself as the economic powerhouse in its industry, it has achieved dominance, as defined in Article 3. To a large extent, it can function independently of its competitors or clients, yet it can also impede effective competition.

D. Abuse of Economic Dependency:

It is against the law for one business to take advantage of another's economic dependence, whether as a customer or a supplier, in order to gain an unfair advantage over them, according to Article 11 of Ordinance 03-03. If a company is unable to avoid contracting under the terms enforced by another company, it is considered to be economically dependent under Article 03 of the aforementioned contract. While it is not illegal for businesses to be

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economically dependent on one another, it is against the law to take advantage of this situation in a way that violates competition laws, such as by making unfair sales practices, demanding resale at a certain price, or imposing unjustified minimum purchase quantities as conditions for sale.¹⁶

E. Predatory Pricing:

Article 12 of Ordinance 03-03 states that businesses cannot engage in practices or offer items or services to the public at prices that are disproportionately low to their manufacturing, processing, and marketing costs in order to discourage or ban other businesses from entering the market. The point is to make sure that competition in the market is working properly. While lowering costs could please customers in the near run, it could drive out other businesses and put only one in charge of pricing.

2.2-Procedures Prior to the Competition Council

While its composition ensures efficient and effective intervention by the Competition Council, the parties' adherence to the rules of procedure is of the utmost importance. In order to conduct thorough investigations and make suitable conclusions, these regulations are necessary to guarantee that all parties follow and do not violate the rules of competition.

The Competition Council is the initial recipient of the formal complaint. Following that, the matter is explored by the Council. The results inform the last step, which is the exercise of Council power. The procedure is detailed below:

First section: Notification to the Competition Council

Exactly who is able to inform the Competition Council? So it is with the Competition Law, per Article 44. Among these are consumer advocacy groups, corporations, professional and trade unions, financial and economic institutions, and local governments.

Any time it finds corporate behavior that violates the requirements of competition articles 6, 7, 10, 11, and 12 of Ordinance 03-03, the Competition Council can independently investigate the matter. Sending four copies of a written document with the relevant papers, sent via registered mail with acknowledgment of receipt or directly to the procedures department in exchange for a receipt, the Competition Council formally petitioned the Council President in this instance. After then, the date of receipt is marked on the petition and it is entered into a sequential register. In addition to the subject matter, the petition must cite relevant legal and regulatory statutes and provide proof to support the allegation. The petitioner must promptly notify the Competition Council of any changes to their address by registered letter with an acknowledgment of receipt, and they must promptly provide the address for notification purposes.

As a last point, the two-month acquisition window is when the Competition Council must answer to petitions.¹⁷

Second section: Inquiry

Once the eligible parties have notified the Competition Council, any questions about the

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entities are addressed. According to Article 34 of Ordinance 03-03, the president of the council can ask the appropriate services to conduct investigations and monitoring, or to provide expertise on issues pertaining to the cases being reviewed.¹⁸

The chief executive officer of the competition council appoints a rapporteur to head the investigation. The rapporteurs of the Competition Council have the power to decide violations of Ordinance 03-03. Nevertheless, pursuant to Article 49 bis, this Authority was enlarged by Law 08-12 to encompass other individuals authorized to conduct investigations relevant to the ordinance's implementation and to determine violations of its provisions. Along with the rapporteurs, this group also includes judicial police officers, members of the trade policy oversight corps, and others with connections to tax policy.

Third section: Adjudication of Cases

This is accomplished via means of:

A. Meetings of the Competition Council:

The President of the Competition Council is responsible for setting the agenda and scheduling each meeting. The following individuals are informed three weeks before to the session: members of the Council, impacted parties, appropriate rapporteurs, and the representative of the Minister of Trade. Members of the Minister of Trade's staff who serve as rapporteurs or representatives are welcome to attend Council meetings, but they will not have voting rights. In the event that the appointed rapporteur is unable to make it to the meeting, the President appoints another person to deliver the report. Ordinance 03-03, as amended, establishes the confidentiality of Council meetings.

B. Nature and Appeal of Decisions:

The Competition Law gives the Competition Council the power to make rulings and levy fines in order to put an end to anti-competitive behavior. Unfettered competitiveness can be more easily guaranteed and maintained with this power. The decisions made by the Competition Council can be categorized in the following ways:

- Decisions on inadmissibility are often based on issues related to jurisdiction, interest, or standing.
- Conclusions based on the merits, including directives, monetary fines, and corrective or preventative measures.

Even though the legislator has given the Competition Council a lot of authority, its rulings can still be challenged and reevaluated. Its rulings can be appealed according to Ordinance 03-03. Any and all decisions made by the Competition Council are subject to the appeal processes laid out in Chapter Five of Title Three of Ordinance 03-03.¹⁹ According to Article 63 of the amended ordinance, after one month of obtaining the decision, the relevant parties can submit an appeal with the Minister of Trade or the Algiers Court of Appeal, which hears cases involving business disputes.

Conclusion:

Findings from this study support the claim that the Competition Council has been given considerable weight by Algerian lawmakers, giving it the status of an autonomous administrative body with its own distinct legal personality inside Algeria's institutional framework. This further establishes the Competition Council's position in economic regulation by reiterating its power to make judgments, suggestions, and offer opinions with the goal of encouraging and guaranteeing efficient market regulation. However, the practical implementation of these powers reveals significant challenges that hinder the Council's ability to fully exercise its independence and authority.

The Council, in its capacity as an autonomous administrative body, also ensures that economic activity runs efficiently and achieves balance. Nonetheless, its role remains constrained by various legal and institutional limitations that affect its effectiveness in overseeing market operations. Protecting competition is an essential function of the Competition Council, which has wide-ranging governmental authority and the ability to prohibit anti-competitive acts. Yet, the lack of clear operational mechanisms and institutional cooperation diminishes its regulatory impact. The fact that the Competition Council is responsible for regulation shows that the state has taken on a new role in ensuring market-based economic public order via the Council.

In practice, the Algerian Competition Council has struggled to establish itself as a leading authority in competition regulation, both economically and institutionally, due to persistent obstacles in its governance and operational autonomy. Here are a few problems that may arise:

Results:

1. The absence of a designated and independent operational space significantly limits the Competition Council's capacity to effectively carry out its mandate. The temporary placement within the Ministry of Commerce restricts its ability to function independently and integrate with necessary administrative structures.
2. Despite legal requirements for publishing competition notices and decisions, the Council has failed to ensure transparency in its rulings, raising concerns about its credibility and institutional engagement.
3. There is a lack of clear delineation between the responsibilities of the Competition Council and other regulatory authorities, leading to overlaps and potential conflicts in market oversight.
4. Although the Competition Council is presented as an independent entity, the legislative framework does not provide sufficient safeguards to ensure true autonomy in its structure and operations.

Recommendations:

Given this context, we suggest the following courses of action:

1. Strengthening the legal framework to ensure genuine autonomy for the Competition Council, similar to models implemented in other jurisdictions.
2. Urging Algerian lawmakers to refine competition laws to eliminate inconsistencies and enhance clarity in market regulations.
3. Ensuring that the Council is equipped with adequate financial, human, and infrastructural resources to fulfill its mandate effectively.
4. Establishing efficient mechanisms for cooperation between the Competition Council, regulatory bodies, and the judicial system to prevent jurisdictional conflicts.
5. Developing a secure and efficient system for receiving and handling complaints and confidential reports to enhance market oversight.
6. Improving transparency by ensuring that all Council decisions, findings, and reports are regularly published and accessible to stakeholders through official platforms.
7. Encouraging the Council to conduct in-depth research and studies on market competition to inform future regulatory strategies.
8. Providing specialized training programs for judges and legal practitioners focusing on competition law to ensure effective enforcement of regulations.
9. Enhancing the implementation and continuous monitoring of legal and regulatory texts to align with best practices in market governance.

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