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"Public institutions of industrial and commercial nature belonging to the economic sector of the army and competition law.

"المؤسسات العمومية ذات الطابع الصناعي والتجاري التابعة للقطاع الاقتصادي للجيش وقانون المنافسة"

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Abstract:

The military institution in Algeria has a long history, as it is the guarantor of the states independence and political security, in addition to that, the military institutions has a role in the national economy, as it has become alongside economic institutions in providing products and providing livelihoods , therefore public institutions of an industrial and commercial nature affiliated with the sector were created, the economic system of the army , in order to achieve the economic goals of the state , operates these economic religions in the economy , making theme subject to competition law , just like the rest of the economic operators , with some privacy.

Keywords: Military institution, competition law, military economy , economic security, the economic dealer.

الملخص باللغة العربية:

المؤسسة العسكرية في الجزائر لديها تاريخ عريق فهي الضامن لاستقلالية الدولة و أمنها السياسي و الدولي كما انه إضافة إلى ذلك أصبحت المؤسسة العسكرية لها دور في الاقتصاد الوطني حيث أصبحت تتدخل إلى جانب المؤسسات الاقتصادية في توفير المنتجات و توفير الحاجيات ولذلك تم استحداث المؤسسات العمومية ذات الطابع الصناعي والتجاري التابعة للقطاع الاقتصادي للجيش وذلك لتحقيق الأهداف الاقتصادية للدولة وتدخل هذه الكيانات الاقتصادية في الاقتصاد يجعلها تخضع لقانون المنافسة مثلها مثل بقية المتعاملين الاقتصاديين مع بعض الخصوصية.

الكلمات المفتاحية: المؤسسة العسكرية، قانون المنافسة ، الاقتصاد العسكري ، الأمن الاقتصادي ، متعامل اقتصاد

Introduction:

The Algerian military institution has a rich history, and its decisive intervention has been crucial in ensuring the continuity of the state based on its constitutional obligations. These obligations include defending the homeland and protecting the security of its citizens. Given the varied constitutional system in Algeria, the roles of the Algerian military institution have differed. Under the 1963 and 1976 constitutions, its intervention in political and economic life was explicitly stated, disregarding what is known as the professionalism of the army, which imposes non-intervention in matters beyond defending the homeland.¹

With the issuance of the 1989 constitution, the military institution was sidelined from political activities, and its role became restricted to protecting the borders from external aggression. As a result, the constitutional legislator explicitly adopted the principle of the professionalism of the People's National Army and limited its tasks solely to matters related to national defense. This was affirmed in Article 30 of the constitution. However, upon careful examination, particularly in the last paragraph of this article,² it is inferred that the constitutional founder placed upon the People's National Army, in addition to its classic duties, the task of protecting vital Since the enactment of Algeria's first competition law under Order 95/06⁶, which marked the first legal recognition of market protection, establishing the Competition Council with powers to ensure no entity

and strategic interests of the country³. The national economy is considered one of these vital and strategic interests, as the collapse of a state is linked to the collapse of its economy, especially amidst the current global economic competition and alliances, and the emergence of what is known as economic security. Consequently, laws were issued to regulate the military institution's interventions in the economy and the tasks entrusted to it in the economic field. Hence, Presidential Decree 08/102 was issued concerning public institutions of industrial and commercial nature affiliated with the economic sector of the People's National Army⁴, considering them the primary tool through which the army directly intervenes in the economy⁵. Therefore, with the military's intervention in the economy through these institutions, questions arise about their compliance with competition law governing the market, which protects economic institutions in the Algerian market. This law has witnessed significant developments, as the Algerian legislator has been keen to keep pace with international agreements through continuous amendments, aiming to ensure that national competition legislation remains compatible with comparative laws. Thus, competition law in Algeria has undergone several important developments.

dominates the market and to suppress all monopolistic practices that hinder competition, it was soon replaced by a new law in 2003 under Order 03/03⁷. This change aimed to align Algeria's

competition law with international legislation, particularly the Euro-Mediterranean Partnership Agreement, which explicitly required harmonization of national laws of the participating countries with its provisions. Algeria ratified this agreement in 2005⁸, necessitating the alignment of its competition legislation accordingly in 2008; the competition law was amended to introduce a series of changes aimed at ensuring greater economic freedom and modifying provisions related to the Competition Council to enhance its effectiveness in safeguarding competition. The latest amendment in 2010 extended the application of competition law to public procurement and import operations.

Therefore, we can conclude the philosophy of the Algerian legislator who introduced several amendments to the competition law in order to align it with comparative international legislations, considering that international economic law now imposes its provisions in the context of legal globalization.

Based on the above, the entry of the institution affiliated with the economic sector of the People's National Army into the market and its economic activities place it in a legal framework termed by the legislator with several terms. It is referred to as "economic aid" when viewed from the angle of commercial practices law, "intervener" from the perspective of consumer protection law, and "institution" from the viewpoint of competition law.

Therefore, our study will focus on examining the public institution of

industrial and commercial nature affiliated with the economic sector of the People's National Army from the perspective of competition law.

The study of this public institution, which operates in the industrial and commercial sector affiliated with the army's economic sector from the angle of competition law, stems from the issue of whether it qualifies as an institution and to what extent competition law applies to it. This is particularly significant given its strategic nature in meeting the military needs of the People's National Army, as well as its ancillary functions?

To answer this issue, we divide the plan into two sections:

- First Section: Public industrial and commercial institution subject to competition law.
- Second Section: Limits of applying competition law to the military public institution of industrial and commercial nature.

The First Section: Public industrial and commercial institution subject to competition law.

Firstly, it is necessary to define the concept of the public industrial and commercial institution affiliated with the economic sector of the People's National Army (first requirement). Following this, we will then consider whether the institution of industrial and commercial nature affiliated with the economic sector of the army qualifies as an entity under the concept of competition law (second requirement).

The first request: The concept of the public industrial and commercial institution affiliated with the economic sector of the People's National Army.

The public industrial and commercial institution is a form of public entity. According to French legal doctrine, a public entity is defined as "a specialized public legal entity established to manage a specific activity, usually a public facility enjoying a degree of independence." Professor Slimane TEMAOUÏ defines a public entity as "a public facility according to the classical definition, managed by a public organization and possessing legal personality"⁹. What distinguishes the public industrial and commercial institution is that it represents a type of public entity whose creation led to what is known as the crisis of the public facility¹⁰. Traditionally, the concept of a public facility referred to the state and administrative public entities.

With the emergence of public industrial and commercial institutions, this concept has evolved significantly; it is no longer limited solely to administrative bodies.

Furthermore, it also includes industrial and commercial establishments. In the Algerian context, these institutions were integrated into the legal system during the socialist era, with the first of these institutions established in 1971. They represent a form of state intervention in the economy, and the Algerian legislator provided a definition for them in Article 44 of Law 88/01, which includes the guiding law.

For public economic institutions¹¹, they are defined as those institutions capable of financing their expenses independently without state intervention. These institutions are privileged entities that perform public facility tasks through specifications that define their duties. It's worth noting that their mission involves autonomously managing a public facility's activities or activities of public interest¹². Additionally, a public industrial and commercial institution can be established by municipalities and regions.

Despite the alignment in principle between the definition of military industrial and commercial institutions and that stipulated in Law No. 88/01, it has been supplemented by the legislator. According to Article 02 of Presidential Decree 08/102, these institutions possess legal personality and financial independence, operating under the economic sector of the People's National Army and under the supervision of the Ministry of Defense.¹³ It is noteworthy that under Decree 82/56, these institutions were formerly referred to as military industrial and commercial institutions. However, under Presidential Decree 08/102, the term "military industrial and commercial institution" was abandoned. The researcher suggests that this change was due to the term "military institution" being more politically associated rather than legally, and it also impacts the neutrality expected of military institutions by the constitution, which primarily involves defense and protection of the nation rather than market intervention. In conclusion, the term "military industrial and commercial institution" might mislead readers into

assuming these institutions solely cater to military needs, whereas they have broader functions, as we will further discuss.

Based on the definition of public military industrial and commercial institutions, we will outline their characteristics (first part) and then discuss how they differ from other concepts (second part)

I- First Branch: Characteristics of the public military industrial and commercial institution under the economic sector of the National People's Army

1- Affiliated to the economic sector of the People's National Army:

The public industrial and commercial institution affiliated with the economic sector of the People's National Army is an economic entity rather than an administrative one. It undertakes economic tasks for the People's National Army, and the legislator has excluded it from the oversight of the Ministry of Industry, although the latter oversees the public commercial sector¹⁴. This institution is under the Directorate of Military Industries within the People's National Army, and in other instances, it falls under the Directorate of Equipment, depending on its specialization. It operates according to a military-economic vision, subject to military authority¹⁵.

The term "affiliated to the economic sector of the People's National Army" clarifies that these institutions are not considered military forces under the Ground Forces, Naval Forces, or Air Forces. Instead, they are economic entities tasked with executing commercial missions defined by

The public military industrial and commercial institution under the economic sector of the National People's Army, as previously defined, is characterized by features distinct from other public industrial and commercial institutions. These characteristics are inferred from Presidential Decree 08/102 which regulates them, and they are as follows:

1. Affiliation with the economic sector of the National People's Army.
2. Establishment by presidential decree.
3. Specificity in objectives.

the Ministry of Defense. It's important to note that these institutions have achieved numerous accomplishments in the field of military industries¹⁶.

2- Established by presidential decree :

Perhaps this characteristic, as outlined in Article 02 of Presidential Decree 08/102, explicitly describes the significance that the legislator has granted to this type of institution. Given that presidential decrees hold the highest ranks of regulations, this feature indicates that such institutions cannot be local, meaning they cannot be established by local authorities. This differs from public industrial and commercial institutions, which can be established through deliberation by municipal or provincial councils¹⁷.

3- Privacy of Objectives:

The objectives of the public institution of industrial and commercial nature affiliated with the economic sector of the army are outlined in Article 05 of Presidential

Decree 08/102. It stipulates that it undertakes three missions:

- a. Objectives related to meeting the needs of the People's National Army are outlined in Article 06 of the same decree as fulfilling these needs¹⁸.
- b. Secondary objectives related to contributing to the national market.
- c. Objectives related to public service.

What can be inferred from these objectives set by the legislators for the department is that despite its connection to the People's National Army, it has expanded its tasks and made them effective in all sectors of the economy. It is generally known that agencies established within a specific ministry cannot perform tasks except within the framework of that ministry, and that the tasks of these agencies extend beyond the scope of the defense sector.

- II- Second Branch: Distinguishing the public institution of industrial and commercial nature affiliated with the economic sector of the military from other concepts. Within this context, we distinguish between the public institution of industrial and commercial nature affiliated with the economic sector of the military, economic public institutions (01), and between it and public institutions of special nature (02).

1- Distinguishing from economic public institutions:

Public institutions of special nature are regulated by multiple ministries and sometimes perform purely administrative tasks. At other times, they undertake tasks

Economic public institutions are entities governed by private law established by the state or local authorities. They are subject to Decree 01/04¹⁹, eligible for privatization, and their funds can be seized. They are supervised by the State Contributions Council. On the other hand, public institutions of industrial and commercial nature affiliated with the economic sector of the military are established by presidential decree and are exclusively under the Ministry of Defense, without involvement from other sectors. They are subject to public law and cannot be established by local authorities (municipalities or provinces). Additionally, they are not eligible for privatization and are not supervised by civil bodies such as the State Contributions Council or professional ministries in trade, industry, or finance. Moreover, their funds are not subject to seizure, expiration, or disposal²⁰.

2- Distinguishing from public institutions of special nature:

A public institution of special nature in Algerian legislation is established to perform its public services, governed by a legal framework entirely different from public institutions of industrial and commercial nature affiliated with the economic sector of the military. Institutions of special nature carry out non-commercial tasks, which are social in nature, unlike the military economic public institutions that engage in commercial activities.

that are monopolistic, such as social security institutions²¹, which cannot be performed by other entities. This contrasts with military economic public institutions,

which conduct activities that could be undertaken by entities governed by private law.

3- Distinguishing from private security companies:

The concept of private security institutions is newly established in economic law. Whereas security was traditionally a sovereign task carried out exclusively by public security agencies, now there exists what are known as private security companies or private military companies. These companies provide security services solely related to security matters²² and operate under the private sector. Their mission is to secure facilities and individuals as specified in contracts they enter into with the entities they protect²³. This is in contrast to public institutions with industrial and commercial characteristics that belong to the economic sector of the military, which undertake economic tasks to supply the military and national market with required goods.

Subjection to Commercial Law in its Relations with Parties

According to Article 03 of Presidential Decree 08/102, public institutions with industrial and commercial characteristics belonging to the economic sector of the military are considered traders in their relations with third parties. This means they are subject to the same obligations imposed on traders under commercial law. Therefore, these institutions are considered traders in the full legal sense, subject to all obligations applicable to traders. Their contracts are commercial contracts governed by the general rules stipulated in

The second request The military institution with industrial and commercial characteristics within the concept of competition law.

Referring to Article 03 of the Competition Law, in its first paragraph, the concept of an institution subject to the provisions of competition law is defined as "every natural or legal person, regardless of its nature, engaged permanently in activities of production, distribution, services, or importation." From this definition of an institution within the context of competition law, it can be inferred that it aligns with the concept of a public institution with industrial and commercial characteristics belonging to the economic sector of the national army. This is because such a public institution with industrial and commercial characteristics within the economic sector is considered a trader subject to commercial obligations (first branch), and it engages in economic activities governed by competition law (second branch)

commercial and civil laws. This clarity is evident upon reviewing Presidential Decree 08/102, which explicitly states that these institutions enjoy trader status and are subject to commercial obligations as detailed as follows:

1- The public commercial institution belonging to the economic sector of the military has financial independence:

According to Article 02 of Presidential Decree 08/102, it explicitly states that the public commercial institution belonging to the economic sector of the military has

legal personality and financial independence. The concept of financial independence is crucial for establishing commercial identity; therefore, the institution cannot be considered a trader unless it enjoys financial independence²⁴

Furthermore, upon reviewing Articles 6 and 7 of the same decree, we find applications of this financial independence. The institution is permitted to establish branches or enter into partnerships, and these contractual mechanisms are governed by provisions in commercial law. Also, among the forms of its financial independence, as indicated by Article 20, paragraph 02, the institution possesses its own assets derived from its activities' proceeds and the support provided to it

In addition, the legislator has granted it the freedom to engage in all tasks that fall within its objectives, thereby affirming the freedom of trade stipulated in the constitution. Furthermore, explicit references to commercial law and civil law in the provisions of this decree indicate its adherence to the provisions of these laws in its relations with third parties.

2- Subject to the accounting system that traders adhere to:

As we know, the Algerian legislative accounting system takes two forms: the first form relates to public accounting, which applies to individuals governed by public law²⁵ and administrative regulations. The second form is the financial accounting system, which applies to traders subject to commercial law²⁶. Referring to the decree, the legislator explicitly states in article 26 that the institution's accounting is conducted in a commercial manner according to the applicable legislation and regulations.

Therefore, the institution is subject to the Commercial Accounting Law, which came into effect in 2010. This means its financial and accounting operations are bound by the regulations stipulated in this law. Consequently, its accounting system does not fall under the provisions of the Public Accounting Law. The legislator acted appropriately by excluding it from the public accounting system, considering that adherence to such a system would hinder its performance as a commercial entity. By adhering to the financial accounting system, the institution is obliged to fulfill commercial accounting obligations, including maintaining commercial books and documented invoices for its commercial transactions.

3- Its management adheres to the practices customary in commercial companies:

Under the decree issued in 1982, the management of the military institution with industrial and commercial characteristics was overseen by a specific director-general appointed by decree. This management did not adhere to the rules applicable to commercial companies, which are typically governed by a management body such as a board of directors responsible for oversight, while the general manager handles implementation.

Under the current decree, the management of these public institutions with industrial and commercial characteristics now follows the governance rules typically applied to commercial companies. Specifically, Article 09 states that 'the institution is managed by a board of directors and operated by a general manager.' This legislative action effectively integrated provisions from commercial law into the management

structure of these institutions. This step was necessary given the lack of a standardized management model for public institutions with industrial and commercial characteristics within the broader regulatory structure²⁷

4- Registration of the institution in the commercial register and advertisement:

The text of Law 04/08, concerning the conditions for practicing commercial activities²⁸, explicitly states in Article 07 that public institutions of industrial and commercial nature must register in the commercial register. Public institutions of industrial and commercial nature belonging to the economic sector of the army are not exempt from this obligation, neither in the law nor in the decree regulating its provisions. This means that its provisions apply to them, especially considering that Law 04/08 concerning the conditions for practicing commercial activities is stipulated within the framework of Decree 08/102.

Furthermore, Article 11 of the same law mandates that all institutions registered in the commercial register must comply with the legal advertisements prescribed by the applicable legislation and regulations.

Practicing economic activities subject to competition law.

Competition law applies to economic activities, so anyone engaging in economic activity must adhere to the rules of competition law and avoid violating its provisions. Economic activities, in reality, do not necessarily refer only to commercial businesses; they can encompass civil work that constitutes economic activity. The concept of economic activity is broad and includes crafts, commercial enterprises, and even agricultural activities.

Referring to the definition of economic activities, Executive Decree 97/39 (amended and supplemented), which pertains to the Code of Economic Activities subject to registration in the commercial register, includes "activities of production, distribution, wholesale, and retail sales." As for competition law, it explicitly defines enterprises in Article 03, providing the scope of economic activities as production, distribution, services, and imports²⁹.

Based on this, we wonder about the extent to which the institution affiliated with the military economic sector engages in these economic activities?

Referring to Presidential Decree 08/102, it specifies the tasks and objectives of the institution, which include meeting the economic needs of the military. Therefore, it engages in all economic activities relevant to the national defense sector, as well as other economic activities to meet domestic market demands.

It should be emphasized in this regard that the industrial and commercial institution affiliated with the military economic sector, while engaging in these economic activities, is subject to competition law. The legislator has not granted any exemption from its provisions in the legal framework governing it. Explicitly, Presidential Decree 08/102 refers to competition law regarding these matters.

Therefore, let's review the economic activities carried out by the public institution of industrial and commercial nature affiliated with the military economic sector as follows:

1- Production Activity:

The public institution of industrial and commercial nature affiliated with the military economic sector engages in production activities as defined by economic legislation. This includes the manufacture of weapons and ammunition, as mandated and recognized by presidential decrees. These decrees authorize the production of weapons, ammunition, and even civilian products such as vehicles and other goods³⁰.

2- Distribution Activity:

The legislator did not explicitly define distribution activity, but its definition can be inferred from Article 02 of the competition law. It's worth noting that the legislator used the term "marketing" instead of "distribution" when discussing the involvement of the institution affiliated with the military economic sector in meeting the economic needs of the army³¹.

Accordingly, like other institutions, the institution affiliated with the military economic sector engages in imports, and the legislator has allocated a decree specifically regulating this, issued in 2011.

It must be noted that some institutions affiliated with the economic sector of the People's National Army are not specialized in specific economic activities; rather, they

3- Service Activity:

The legislator did not define service activity in a manner similar to distribution activity. However, service activity can be broadly understood compared to other economic activities. Therefore, institutions affiliated with the military economic sector intervene in various ways to fulfill assigned needs by providing diverse services.

4- Import Activity :

Importation is considered among the important and sensitive activities, which is why the legislator has dedicated separate laws for import and export³². This activity contributes to satisfying both civilian and military market needs, making it parallel to production activity in this function. However, its role should be complementary to national production to ensure economic integration and prevent harm to the national economy. Therefore, import activity was incorporated into competition law through an amendment in 2010, aiming to ensure that importers exercise their freedom responsibly to avoid harming other importers.

engage in one or more or all economic activities³³.

The second section: Limits of Applying Competition Law to the Public Military Institution of Industrial and Commercial Nature

The compliance of the industrial and commercial institution affiliated with the military economic sector with competition

law does not imply that it adheres to this law in the same manner as other institutions subject to competition law. There are constraints that exempt it from certain provisions, particularly evident in its monopolistic practices in certain activities (First Request). On the other hand, due to the specificity of some activities carried out by these institutions, competition law is applied to them in a relative manner (Second Request).

The First Request: Monopoly as a restriction exempting it from competition

Firstly, it is worth noting that monopoly is considered a practice that stifles competition and restricts economic freedoms. Consequently, the Algerian legislator explicitly rejected this practice in its legislation after the adoption of economic freedoms. Additionally, according to the 1996 Constitution, as amended in 2016, it explicitly prohibits monopoly in the last paragraph of Article 43.

Monopoly is indeed a form of socialism that infringes upon the freedom of initiative, trade, and investment. It is also regarded as a manifestation of economic discrimination³⁴.

Therefore, within this context, we inquire about the activities monopolized by institutions affiliated with the military economic sector?.

The legislator has subjected institutions affiliated with the military economic sector to the same principles and regulations that govern commercial institutions in the

market, as we have previously indicated. This includes their acquisition of merchant status and the associated obligations, as well as their compliance with competition law, given that these institutions engage in economic activities specified within the framework of competition law.

These institutions work to meet the needs of the military on one hand and contribute to fulfilling national market requirements on the other. Therefore, despite the legislator not endorsing any preferential treatment for this category of institutions, considering them as economic players within the market, they have been granted the right to monopolize certain economic activities related to public security, which are inherently sensitive.

These activities refer to military industries specified in Law 97/06³⁵, which is implemented under Executive Decree 98/96. According to Article 08 of this law, "The Ministry of National Defense, on behalf of the State, through its organic departments and/or affiliated institutions under its supervision, monopolizes the manufacture, import, and export of equipment, weapons, weapon components, ammunition, and ammunition components of the first, second, and third categories."

According to this text, the legislator clearly acknowledges the monopoly granted to entities belonging to the economic sector of the People's National Army for all economic activities related to industry, import, and export of weaponry, arms and their components, as well as ammunition and its elements from categories one, two, and three.

Therefore, to clarify the issue of this monopoly granted to these institutions, we must first address the scope of the monopoly (01), and then discuss the limits of the monopoly granted to them (02).

1- Equipment, Weapons, and Ammunition of Categories One, Two, and Three Subject to Monopoly:

Through Executive Decree 98/96, which aimed to enforce the provisions of the 1997 law concerning military equipment, weapons, and ammunition, the legislator regulated the provisions related to weapon manufacturing, transfer, possession, and all other regulations. Recognizing that weapons are highly sensitive products, the legislator treated them with special scrutiny, imposing the requirement for obtaining licenses for their possession, carrying, or transfer, and prohibiting certain individuals from obtaining licenses for objective or personal reasons³⁶.

The legislator also specified the mechanisms and procedures necessary to obtain investment licenses in the manufacturing, importing, and exporting of weapons, according to the type of weapons involved in the investment. Referring to Article 03, the legislator defined the weapons considered "military equipment," which are classified into three categories:

1. Category One: Firearms and their ammunition, and all weapons intended for ground, air, or naval warfare.
2. Category Two: Equipment designed for carrying or using weapons belonging to Category One in combat, along with some surveillance, detection, and communication equipment.
3. Category Three: Equipment for protection against combat gases, radiation, emissions from weapons and ammunition of Category One, including items such as masks, filtration equipment, and specialized clothing.

These three categories are considered by the legislator as generally reserved for the Ministry of National Defense and its public industrial and commercial enterprises, according to Article 08 of the same decree. This means that the legislator explicitly exempted provisions of competition law that would otherwise restrict a specific institution from monopolizing economic activity in the market.

In this context, we question whether the monopolization by public institutions affiliated with the economic sector of the People's National Army in investing in classified military equipment, as defined by this decree, constitutes a violation of competition law?

To answer this question, we need to identify the practices that competition law considers to undermine or restrict competition. This will help us determine whether the monopoly granted to public institutions under the economic sector of the army is considered anticompetitive under the provisions of competition law.

Upon referring to the competition law, we find that the legislator has defined the practices that restrict competition in Articles 6 to 12 of the law. These practices include the following:

- Agreements and arrangements that restrict competition
- Abuse of dominant position
- Predatory acts and contracts
- Arbitrary imposition of dependency
- Arbitrarily low pricing

Referring to these practices enumerated by competition law, granting a monopoly to public institutions under the economic sector of the People's National Army

constitutes an intervention falling under the second category of restricted practices, which is abuse of dominant position. Article 7 of the competition law states: "Any abuse arising from a dominant position in the market or monopolizing it or a part thereof is prohibited..."

When reading this article, we find that the public institutions under the economic sector of the People's National Army are considered to be anti-competitive. However, explicitly in Article 9 of the competition law, the legislator states the lifting of the prohibition on institutions that violate the provisions of Article 07 of the competition law. Therefore, these institutions are not subject to the provisions of the competition law, and the institutions under the economic sector of the army are not exposed to penalties prescribed in the competition law. This is in accordance with Article 9 of the competition law, which states: "Agreements and practices resulting from the application of a legislative or regulatory provision are not subject to the provisions of Articles 06 and 07 above."

In response to the above question, we conclude that granting a monopoly to public institutions under the economic sector of the People's National Army in the field of investing in classified weapons as military equipment is not considered a violation of competition law, nor does it undermine the general economic order in its competitive dimension³⁷. This is because the competition law itself permits such practices as long as this monopoly is established by regulatory provision.

2- Limits of Monopoly Granted to Public Institutions with Industrial and Commercial Characteristics Affiliated with the Economic Sector of the People's National Army:

Despite granting the Ministry of Defense and its affiliated public institutions with industrial and commercial characteristics a clear monopoly in the field of investing in weapons classified as military equipment, the legislator did not grant them an absolute monopoly. This is because it opened the door for other institutions to invest in this field, as explicitly stated in the second paragraph of Article 08, which states, "However, others, whether natural or legal persons, may be licensed to manufacture, import, export weapons, ammunition, and their components as mentioned in the previous paragraph."

It can be inferred from this paragraph that the legislator prioritized economic freedoms over security considerations. While the first paragraph of the article included a prohibition on engaging in economic activities related to military equipment, the subsequent paragraph reversed this prohibition and opened the field for non-governmental entities to invest in weapons classified as military equipment.

In this regard, the legislator appears contradictory and hesitant in opening the investment field for weapons and ammunition classified as "military equipment," as evidenced by the following observations:

- Granting monopoly to the Ministry of Defense and its affiliated public institutions in the first paragraph of Article 08, followed by opening the investment field to others in the second paragraph, undermines the principles of legal drafting. This is because it creates ambiguity by initially prohibiting competition in the first paragraph and then approving competition freedom in the second paragraph, suggesting legislative hesitation regarding the commitment to establishing investment freedom in this type of weaponry.
- The imposition of control by the Ministry of Defense on investments in weapons classified as military equipment raises questions about the viability of enforcing competition law. If the regulator of investments is also the investor, what is the position of other investors who invest in these weapons under the scrutiny of their competitors in the market?
- The formulation of Article 08, which suggests granting a monopoly "to the Ministry of Defense through its organic bodies," leaves the reader wondering about the meaning of "organic bodies" of the Ministry of Defense that can engage in economic activities. This is particularly perplexing considering that the Ministry of Defense is an administrative entity without legal personality, engaged administratively in managing the national defense infrastructure ³⁸on behalf of the state. How then can it monopolize investment in weapons classified as military equipment, considering it a purely economic activity?

Adding to the confusion, the legislator included "and/or institutions placed under its supervision," referring specifically to public institutions with industrial and commercial characteristics under the economic sector of the army. These institutions alone are authorized to monopolize investment in weapons and ammunition classified as military equipment, as the legislator established them to perform economic tasks related to the management of the national defense infrastructure³⁹.

Second Request: The Relative Application of Competition Law to Public Institutions with Industrial and Commercial Characteristics Affiliated with the Economic Sector of the National People's Army.

Competition law applies to all economic institutions in the market, based on the legislator's endorsement aiming to protect the economic public order. In fact, this law is fundamental for activating investment law. It is not feasible to apply investment law without adhering to competition law, with its principles, incentives, and guarantees, especially considering the protection of investors in the market. In a market economy system, profit and loss hinge on market dynamics. Therefore, it is pertinent to note in this demand that the absolute application of investment law does not apply to public institutions with industrial and commercial characteristics affiliated with the economic sector of the National People's Army. This place these entities in a powerful position in the market compared to other economic institutions (first branch). Moreover, the fact that these public institutions undertake some tasks of

the public facility makes the application of competition law to them cautious, considering the primacy of the public facility principle over competition law rules (second branch).

The Relative Application of Investment Law Principles to the Public Institution Affiliated with the Economic Sector of the Army

Investment law serves as the official framework that highlights the extent to which the state encourages economic freedoms, as this law was enacted to activate the economic freedoms stipulated in the constitution. It is also considered one of the most important laws concerning foreign investors.

Therefore, countries compete to attract investors based on their laws, and the more attractive and stable the law, the more prestigious the country's ranking becomes in the classifications of international organizations interested in the business climate⁴⁰.

The investment law in Algeria has undergone several revisions since the first investment law in 1963 up to the latest law, Law 22/18 currently in effect, which is more open and more encouraging to investment. Based on this introduction, we will review the principles of the investment law, (01) Then we will discuss the application of the principles of the investment law.(02) And then we will address the extent of the application of the principles of the investment law on the public institution with industrial and commercial characteristics affiliated with the economic sector of the national army.

1- Principles of Investment Law:

Law 22/18 on investment introduces a set of principles that govern investment practices⁴¹, essentially guiding economic freedoms. Recognition of these economic freedoms is framed within these principles. Article 03 of the Investment Law stipulates three principles that must be respected: freedom of investment, transparency, and equality in dealing with investments. Therefore, we will discuss each principle individually:

Principle of Freedom of Investment:

Freedom of investment is one of the principles endorsed by international conventions and safeguarded by global institutions, as it is fundamental in economic law. Without freedom of investment, discussing other economic freedoms becomes impractical.

As an example, Algeria's transition from socialism to a market economy is exemplified by its adoption of the freedom of investment under the Investment Law of 1993. This law was enacted to remove obstacles hindering this freedom.

It should be noted that the Algerian legislator dealt with investment freedom gradually. Under Legislative Decree 93/12, investment freedom was established, but certain sectors and fields⁴² were initially exempted. The legislator later abandoned these restrictions and exceptions in 2003 and in 2016, and with the constitutional amendment, constitutional recognition of investment freedom was granted, elevating its status to constitutional⁴³ after being initially enshrined at the legislative level.

What should be noted in this regard is that investment freedom was recognized by Law 22/18 concerning investment and was coupled with another principle, which is the principle of non-discrimination. This is derived from Article 03, which states: "Investment freedom: every natural or legal person, national or foreign, resident or non-resident, wishing to invest, is free to choose their investment within the framework of respect for the legislation and regulations in force." What can be inferred from this is that the legislator does not discriminate between investors, regardless of their form, whether natural or legal persons, and regardless of their nationality, whether national or foreign.

The Principle of Transparency:

The principle of transparency is one of the well-known principles in the law, and due to its importance, the legislator has incorporated it into a set of laws, including the Anti-Corruption Law, the Commercial Practices Law, the Competition Law, the Law Regulating the Relationship between Administration and Citizens⁴⁴, and finally, the Investment Law.

The principle of transparency has been enshrined based on the understanding that economic freedoms and investor guarantees cannot exist in an opaque market where information is not readily available. Ambiguity is considered a barrier to exercising economic freedoms. Hence, the constitutional founder has endorsed transparency, even in relation to legal texts, stipulating that they must be clear and easily accessible to ensure legal certainty⁴⁵.

The Principle of Equality:

The principle of equality is one of the fundamental pillars in the legal system, characterized as a constitutional principle above all other considerations. Its manifestations are evident across various branches of law. The Investment Law is among the earliest legislative texts that emphasized the importance of this principle, as economic freedoms are meaningless unless they are equally accessible to all individuals.

2- Extent of application of the principles of the investment law on the public institution affiliated with the economic sector of the army.

The principles mentioned above, represented in each of the freedom of investment, transparency principle, and equality principle, apply to all institutions in the market, as mentioned earlier, without any distinction between them, either because of nationality or the nature of the individual, whether they belong to the public sector or to the private sector.

Regarding the principle of investment freedom mentioned earlier, it applies to all institutions, including public institutions affiliated with the economic sector of the army, as they are subject to the investment law. This is clearly reflected in the provisions of the presidential decree issued in 2008 that regulates them.

However, since the principle of investment freedom, as defined in Article 03 of the Investment Law, is based on the principle of non-discrimination, this complementary principle does not apply to the economic institution affiliated with the army's economic sector. The legislator has indeed stipulated in several provisions exemptions for this institution compared to economic operators in the market.

The "market" here referred to the market related to the trade, manufacture, and import of weapons. The legislator explicitly excluded foreign operators from entering this market and competing in it. This implies that competition is restricted to domestic private operators and the public industrial and commercial institution affiliated with the army⁴⁶. The legislator distinguished between these latter entities and private economic institutions by exempting the public industrial and commercial institution affiliated with the army from administrative procedures for investment. In contrast, private economic institutions are subject to numerous administrative conditions for investing in the military industries sector⁴⁷.

As for transparency, this principle does not apply to many economic operations carried out by public industrial and commercial institutions affiliated with the military economic sector. This is because the military economic sector is characterized by a level of confidentiality, as countries often conceal information related to military contracts due to the sensitive nature of this sector. Some countries even extend this secrecy to judicial authorities, given the confidentiality surrounding national defense matters⁴⁸.

Finally, the principle of equality cannot be applied to public commercial institutions affiliated with the military economic sector. These institutions operate under special decrees and legal systems concerning their employees, which are unfamiliar to other institutions in the market⁴⁹. Moreover, their contracts are governed by specific provisions that the

legislator has not subjected to general rules. Even their oversight bodies differ from those overseeing other economic institutions⁵⁰.

Through reviewing the principles of investment and their relative application to public commercial institutions affiliated with the military economic sector, we conclude that the Competition Law, which regulates the market where investors operate, applies its provisions relatively to these institutions. This is because the Competition Law is based on the same fundamental principles as those in the Investment Law. The principles embedded in the Investment Law apply to all economic laws, including the Competition Law.

I- Second branch: Ancillary Economic Activities and the Relative Application of Competition Rules

Public industrial and commercial institutions affiliated with the economic sector of the Algerian People's National Army, as mentioned above, engage in economic activities that fulfill the needs of the army. They also conduct economic activities related to the national market. Additionally, the legislator has assigned activities related to public facility missions to these institutions. Article 05, the last paragraph outlines their tasks, stating, "It can also meet the consequences of public service according to terms set for this purpose."

Therefore, let's review some applications of ancillary activities practiced by the public institution affiliated with the army's economic sector (01), and then examine the extent to which these activities are subject to competition law (02).

1- Regulations Governing the Practice of Ancillary Services by Public Institutions Affiliated with the Economic Sector of the Army:

A series of presidential decrees have been issued allowing public commercial institutions affiliated with the economic sector of the army to engage in tasks related to public service. By this, the legislator refers to tasks related to public facilities.

Initially, it must be noted that the public facility was explicitly designated in the amended 1996 Constitution, reaffirmed in 2020, with specific articles, making the

principles of the public facility constitutional. These principles include continuity, continuous adaptation, and fair coverage of national territory. This constitutional recognition of the principles of the public facility derives an explicit acknowledgment of the objective criterion in defining the public facility. The theory of the public facility is no longer limited to administrative bodies; the legislator now intervenes through laws and decrees to classify certain activities as public services. For example, under Law 88/01 concerning public economic institutions, the legislator explicitly intervenes to state that the financial and administrative independence of these institutions may be restricted under terms and conditions to fulfill tasks related to public service. The activity related to public service is that which aims to meet public needs equally and without consideration for commercial profit, as it aims to achieve the public interest. Therefore, the state intervenes by compensating public economic institutions that perform tasks related to public facilities⁵¹.

The legislator intervened in various economic sectors and considered them activities related to public facilities⁵². The same was done for public institutions with military-industrial commercial character, where several decrees stipulated their commitment to performing tasks related to public service under signed specifications.

The legislator defined a set of regulations for these institutions to perform public facility tasks, which are:

- Request from the Minister of Defense or any other minister:

The Minister of Defense is the supervisory authority over these institutions according to Article 02 of Presidential Decree 08/102. Therefore, whenever it becomes apparent to him that an activity should be carried out within the framework of public service, he requests it from the managers of these institutions. Perhaps the observation raised in this regard is the opening for any other minister to request the performance of a facility-related task by a commercial public institution affiliated with the military economic sector. This raises questions about the relationship of other ministers with these institutions⁵³.

- Defining Ancillary Tasks According to Specifications:

The legislator has stipulated that these institutions must perform public facility tasks according to specifications that outline the responsibilities of public service imposed upon them. This is the approach taken by the legislator when assigning ancillary tasks to an economic institution.

2- The extent to which ancillary activities are subject to competition law:

The legislator explicitly states in Article 02, the last paragraph of the Competition Law, that competition law does not apply if its application would hinder the functions of the public facility or public authority considerations.

The public facility is considered one of the constraints that exempt it from the application of competition law. However, the legislator specifies that competition law does not apply when its application would hinder the functions of the public facility or its public authority considerations. The activities of the public institution with industrial and commercial characteristics, affiliated with the economic sector of the People's National Army, relating to public facility tasks, do not imply the exclusion of competition law application. Instead, competition law does not apply if its provisions adversely affect the smooth conduct of ancillary activities. The concept of a public institution is not strictly bound to the idea of a public facility, as it may engage in non-facility-related activities, as suggested by jurisprudence⁵⁴.

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- Nadia Foudil, "Commercial Law: Commercial Transactions, Trader, Commercial Establishment," 6th Edition, 2004, University Press Office, p. 125

02-Thesis and dissertations:

- Hachani Abdelhamid, "The Military Institution with an Industrial and Commercial Character," Master's Thesis, State and Public Institutions, 2007/2008, p. 09.
- Bouzid Ghellabi, "Concept of Public Institution," Master's thesis, specializing in Public Administration Law, 2010/2011, p. 19.
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- Bouzid Ghellab, "The Concept of Public Institution," p. 38
- The Algerian legislator referred to them as "les subventions" (subsidies), which aim to cover the expenses of public institutions subject to public facility restrictions and to cover the increase in prices of foodstuffs, especially widely consumed ones. This is to prevent harm to producers and distributors due to the state's regulation of these prices. Reference: Aissou Karima, State Aid to Public Economic Institutions in the Face of Competition Law, Master's Thesis in Public and Governmental Bodies, University of Béjaïa, 2015/2016, p. 15

03-Articles:

As an example, the Central Base of Supply for the First Military Region in Blida belongs

Conclusion:

We can summarize that the public industrial and commercial institutions belonging to the economic sector of the Algerian National People's Army are considered by the Algerian legislator as institutions under the concept of competition law. This is due to their engagement in economic activities and their adherence to provisions applicable to other commercial institutions, such as special accountability and commercial obligations. However, despite this classification, the legislator restricts the application of competition law to these institutions due to considerations related to their missions. These institutions operate in a sovereign economic field that intersects with national security, particularly in military industries and related economic operations involving weapons and ammunition classified as military equipment. Therefore, competition law is applied to them in a relative manner, considering the auxiliary tasks they perform in aiming to achieve public interest through the public facility they provide.

It can be concluded that the public industrial and commercial institution belonging to the economic sector of the Algerian National People's Army is considered an economic operator of a special nature. This is because it is subject to the provisions of competition law when engaging in economic activities aimed at satisfying the national market. On the other hand, it diverges from the application of competition law regarding economic activities related to meeting the needs of the Algerian National People's Army and when performing public facility tasks.

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- President Abdelmadjid Tebboune stated, "The army has reached a level of professionalism that keeps it distant from politics," as reported by Army Magazine, Issue 692, March 2021, p. 06.
- -This refers to activities designated for the state, its branches, or any specific legal entity according to legislative provisions under Article 01 of Legislative Decree 93/12 concerning investment.
- -Legislative conditions are one of the most important factors influencing the formation of the economic climate in which investors operate, according to Rial and Zeina, "Algerian Investment Climate and its Determinants," Maarif Journal of Economic Sciences, Year 10, Issue 19, December 2015, p. 252.
- -This distinction is evident through granting economic initiative freedom to one entity while restricting economic freedoms for other economic entities.
- -This is evident through its designation, as its function is to meet the economic needs of national defense.
- -Executive Decree No. 92/07 dated January 1992 was issued to unify social security funds and regulate their financial and administrative management, considering them public institutions with special management subject to special laws. This applies not only to social security institutions but also to all public entities with

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- Some statistics indicate that the turnover achieved by these institutions amounted to 10 billion centimes, contributing to job creation according to the same reference, p. 02.
- The Competition Law aims to protect the competitive economic order, as cited from "Najat Tabaa / Sabah Abdul Rahim, Competition Council as a Regulatory Authority for the Competitive Market, Tahlilat Magazine, Published 31/12/2020, p. 09."
- Employees of public industrial and commercial institutions affiliated with the economic sector of the army do not fall under either the Public Service Law or the Labor Relations Law. Instead, the legislator subjects them to an independent legal system categorized into three groups: firstly, military personnel; secondly, civilian employees similar to military personnel; and thirdly, civilian employees who are not similar to military personnel. Cited from Hachani Abdelhamid, Military Industrial and Commercial Institution, p. 23.
- Such as the General Inspection Authority of the Army, which exercises the same oversight as the Audit Board over other public institutions, Cited from same reference, p. 40.
- This question can be answered by considering that these institutions engage in activities beyond those directly related to the national defense sector, which allows them to interact with the minister supervising the sector in which they operate.
- Mezghenni Hizoum Badreddine / Nahantli Rabah, "Peace and Security in the Context of Private Security Companies," National

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- -For example, Article 03 of the Electricity and Gas Distribution Law through Channels 02/01, as amended and supplemented by Finance Law for the year 2015, Volume 78, considers the distribution of electricity and gas as a public facility activity. It aims to ensure the provision of electricity and gas across the national territory under optimal conditions of security, quality, price, and compliance with technical and environmental regulations.
- -It is necessary to submit a set of documents along with the application for a license, as specified by the relevant minister. Among these documents are a certificate of criminal record, a copy of the institution's articles of incorporation, proof of nationality, and

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- 05-The army intervenes in the economy indirectly, such as overseeing national economic institutions, exemplified by the membership of the National Defense Representative in the National Energy Council, among others
- -Among these tasks: "contributing to the formation of defense industry, ensuring the transfer, upgrading, and control of defense technology, conducting research and development activities..."

04-Legal documents:

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- -Article 44 of Law 88/01, which includes the guiding law for public economic institutions, states: "When a public entity is capable of financing its operational burdens partially or entirely through the proceeds from commercial production carried out according to a predetermined tariff and a general terms and conditions document specifying the burdens and restrictions imposed on the entity, as well as the rights and powers associated with it, and when necessary the rights and duties of users, it shall be designated as a public entity with an industrial and commercial character."
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- The last paragraph of Article 30 of the amended and supplemented 1996 Constitution states, "The People's National Army undertakes to defend the vital and strategic interests of the country in accordance with the provisions of the Constitution."
- The importance of the economy in the state is evident, as the survival and international status of a country are linked to its economic strength.
- Presidential Decree 08/102, dated March 26, 2008, defines the basic model law for

compliance with specified deadlines, as outlined in Article 14 of the same decree.

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- 54- Bouzid Ghellab, "The Concept of Public Institution," p. 38.
- amendment under Presidential Decree 20/442
- 46- However, foreigners can engage in activities related to the manufacture, import, and export of weapons by entering into partnerships with public industrial and commercial institutions affiliated with the economic sector of the Algerian People's National Army, or Algerian nationals, provided that the majority ownership remains with the Algerian partner. This is stipulated in Article 12 of Executive Decree 98/96, which outlines the procedures for implementing Order 97/06.
- 47- It is necessary to submit a set of documents along with the application for a license, as specified by the relevant minister. Among these documents are a certificate of criminal record, a copy of the institution's articles of incorporation, proof of nationality, and compliance with specified deadlines, as outlined in Article 14 of the same decree.
- 48- Nouri Abd el Samad, Legal Framework for National Security Protection, cited reference, pp. 54-55.
- 49- Employees of public industrial and commercial institutions affiliated with the economic sector of the army do not fall under either the Public Service Law or the Labor Relations Law. Instead, the legislator subjects them to an independent legal system categorized into three groups: firstly, military personnel; secondly, civilian employees similar to military personnel; and thirdly, civilian employees who are not similar to military personnel. Cited from Hachani Abdelhamid, Military Industrial and Commercial Institution, p. 23.
- 50- Such as the General Inspection Authority of the Army, which exercises the same oversight as the Audit Board over other public institutions, Cited from same reference, p. 40.
- 51- The Algerian legislator referred to them as "les subventions" (subsidies), which aim to cover the expenses of public institutions subject to public facility restrictions and to cover the increase in prices of foodstuffs, especially widely consumed ones. This is to prevent harm to producers and distributors