

## THE PROHIBITED AGREEMENTS PROTOTYPES



<sup>1</sup>fatih NAAR

Faculty of Law and Political Science, University of Tizi-ouzou



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**Abstract:** Prohibited agreements are considered to be one of the most important restrictive practices, as the agreement itself is authorised, and becomes prohibited only if its objective is likely to have a negative impact on the freedom of competition to prevent, restrict or distort competition.

However, with reference to the provisions of the legislation relating to competition, it is noted that it is difficult to identify prohibited agreements because of their complex nature and their different types on the one hand, and the criminal system characterised by these anti-competitive practices on the other hand.

**Key Words:** Agreements; Prohibition; Free Competition; Restrictive Competition Practices; Algerian Legislation.

### نماذج الاتفاقات المحظورة

**المخلص:** تعتبر الاتفاقات المحظورة من أهم الممارسات المقيدة للمنافسة، فالاتفاق نفسه مباح فلا يصبح محظورا إلا إذا كان غرضه من المحتمل أن يكون له تأثير سلبي على حرية المنافسة من خلال منعها أو عرقلتها أو تقييدها. ولكن بالرجوع إلى أحكام النص التشريعي المتعلقة بالمنافسة، يمكن التركيز على صعوبة حصر الاتفاقات المحظورة نظرا لطابعها المركب واختلاف نماذجها من جهة، وعلى النظام الجزائي المميز لهذه الممارسات المنافية للمنافسة الحرة من جهة أخرى.

الكلمات المفتاحية: الاتفاقات، سلطة الضبط، الحظر، حرية المنافسة، الممارسات المقيدة للمنافسة، التشريع الجزائري.

### *Les prototypes des ententes prohibées*

**Résumé :** Les ententes prohibées sont considérés comme l'une des pratiques restrictives de la concurrence les plus importantes, dans la mesure où l'accord lui-même est autorisé, et ne devient interdit que si son objectif est susceptible d'avoir un impact négatif sur la liberté de concurrence d'empêcher, de restreindre ou de fausser la concurrence.

Toutefois, en référence aux dispositions du texte législatif relatives à la concurrence, on constate la difficulté d'identifier les accords prohibés en raison de leur nature complexe et de leurs différents types d'une part, et du système pénal caractérisé par ces pratiques anticoncurrentielles à la libre concurrence d'autre part.

**Mots Clés :** Ententes; Prohibition; Libre Concurrence; Pratiques Restrictives de la Concurrence ; Législation Algérienne.



## Introduction:

The principle of free competition allows economic agents to engage in industrial and commercial activities within a system of competition and complete freedom of dealing, but liberal society advocates state intervention when the law of supply and demand does not play its natural role. Some dealers can restrict the normal and orderly functioning of the market, so the state intervenes to remove this imbalance.

Thus, the legislation regulating free competition is not considered as an arsenal of war directed against the private regulation of the economy, but plays a supervisory role in line with the interests of economic operators, they can be victims of other operators, and censorship allows the prevention of monopolies that completely destroy the capitalist system.

Although the Algerian legislator codified the rules of competition under Law No. 89-12 of July 5, 1989 on prices<sup>1</sup>, where this law was devoted to illegal commercial practices, which allocated some competitive practices to competition in that period, but the legislator was forced to reconsider these provisions with reforms, and thus Order No. 95-06 of January 25, 1995 relating to competition<sup>2</sup>, which took care of one of the anti-competitive practices represented in prohibited agreements, but it was repealed. By Ordinance No. 03-03<sup>3</sup>, amended and supplemented in 2008<sup>4</sup> and 2010<sup>5</sup>, this Ordinance consolidated all the provisions of Ordinance No. 95-06 on competition with certain enrichments into a single legislative framework separating commercial practices from anti-competitive practices.

With reference to the provisions of this legislative text, it is possible to focus on the difficulty of detecting prohibited agreements due to their complex nature and different models, on the one hand, and on the penal system that distinguishes such anti-competitive practices.

Therefore, it is necessary to address the complex nature of prohibited agreements (the first topic) then the specific nature of the sanction prohibited agreements (the second topic)

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<sup>1</sup> Law No. 89-12 of July 5, 1989 on prices, JORA No. 29 of 1989. (Repealed).

<sup>2</sup> Ordinance No. 95-06 of January 25, 1995 relating to Competition, JORA No. 09 of 1995. (Repealed).

<sup>3</sup> Ordinance No. 03-03 of July 19, 2003, on competition, amended and supplemented, JORA n°43, of July 20, 2003.

<sup>4</sup> Law No. 08-12 of June 25, 2008, on Competition, amending and supplementing Ordinance No. 03-03, JORA No. 36, of June 2, 2008.

<sup>5</sup> Law No. 10-05 of August 15, 2010, on Competition, amending and supplementing Ordinance No. 03-03 of July 19, 2003, JORA n° 46, of August 18, 2010.



## THE FIRST TOPIC:

### **The complexity nature of prohibited agreements**

Article 6 of Ordinance No. 03-03 on Competition, amended and supplemented, states that "practices, concerted acts, agreements and agreements, express or implicit, when they aim or may be aimed at impeding, limiting or impairing the freedom of competition in a market, shall be prohibited"...

It is clear from these provisions that the essential element that unites these various anti-competitive practices is the exchange of will between two or more economic operators. However, such exchange can take several different forms (first requirement), and are prohibited practices, because of their restriction of free competition (second requirement).

#### **first requirement: Diversity of prohibited agreements forms**

By examining the provisions of article 06 of the Competition law, it is possible to distinguish between three models of prohibited agreements prohibited by the legislator as contrary to the principle of free competition: agreements(first section), concerted acts (second section), and assembly decisions(third section).

#### **First section: The agreements idea content**

The Algerian legislator did not address the definition of prohibited agreements, but only listed some cases in which they are prohibited, as the wording of the text came in general article includes orchestrated acts, agreements and explicit or implicit agreements, but it is required that its objective be anti-competitive and that is what the law stipulated in the phrase ... aim or can aim ..."<sup>1</sup>

In the sense of violation, agreements that do not aim to restrict do not enter into the prohibition, and this is considered an affirmation of the principle that economic agreements do not constitute prejudice to their limitation, and thus the legislative definition of anti-competitive agreements is not on the basis of their characteristics, but on the basis of their goals and objectives.

The agreements idea in the competition law field means any undertaking between the two parties. It should be noted that this undertaking does not require the binding

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<sup>1</sup> See: Art 6 of Ordinance No. 03-03, previous reference.



nature of the parties, but it is sufficient to express a common will to conduct and act in a certain capacity within the market<sup>1</sup>.

Thus, referring to comparative law, especially jurisprudence in France and at the European level, the oral agreement between two companies was considered as an agreement in the fullest sense of the word, which proves the flexible nature of this idea<sup>2</sup>.

### **Second section: concerted action**

It is a form of agreement in which institutions knowingly accept, despite the absence of any legal obligation, to observe a common pattern of behavior in exchange for abandoning their unilateral and independent behavior in the market. The orchestrated act does not require the express expression of will nor does it require a legal form, as it is a de facto situation that is revealed despite the absence of any agreement. These practices are represented in the fact that the institutions refrain from competing with each other, such as the institutions practicing realistic similar prices, or refraining from developing and expanding the field of their commercial activities, or refraining from promoting their transactions outside the scope of their activities in which they used to deal.

It is difficult to distinguish between the agreement and the concerted action, as in both cases we find that two wills converge in order to coordinate activity at the market level. However, these two forms of anti-competitive practices differ mainly in the presence of the undertaking in the case of the Convention and in the absence of it in respect of the orchestrated works, since the Convention creates obligations between the parties while the orchestrated acts consist merely of conduct resulting from consultation and coordination between the parties<sup>3</sup>.

Referring to the text of Article 8 of the Competition Law, we find that it has been stipulated that "every obligation, agreement or contractual clause related to one of the practices prohibited under Articles 6 and 7 mentioned above" is invalidated, which proves that the invalidity of the orchestrated acts is not stipulated due to the lack of

<sup>1</sup> For more details see:

جلال مسعد ، مدي تأثير المنافسة الحرة بالممارسات التجارية، (رسالة لنيل درجة الدكتوراه في القانون ، فرع قانون الأعمال )، كلية الحقوق والعلوم السياسية ، جامعة تيزي وزو ، 2012، ص ص 41-42.

<sup>2</sup> PAPPALARDO Aurélio, « La réglementation communautaire de la concurrence : les dispositions du traité C.E. et de droit dérivé relatives aux ententes entre entreprises, à l'abus de position dominante et au contrôle des concentrations », Revue Internationale de Droit Economique, n° 3, 1994, p. 354.

<sup>3</sup> See :

بوسعيد ماجد، الاتفاقيات المحظورة المقيدة لمبدأ حرية المنافسة، مجلة المفكر للدراسات والعلوم القانونية والسياسية، العدد 02، ورقة، 2018،



legal association, which leads to the absence of any place for the annulment procedure<sup>1</sup>.

### **Third section: Consolidation Decisions between Enterprises**

The factor of belonging to a professional association or union is a condition for the entry of a particular institution into the market the French Competition Council and the Judiciary have noted that some of these regulations include arbitrary conditions, for example: In the case of the gathering of French bank cards, a loan institution was rejected to this grouping, which benefits from the right to use an interbank network for withdrawal and payment, as the French Competition Council considered that the statute of this loan institution includes clauses restricting competition, so the Council ordered the cancellation of the clause that provides for the possibility of Refusing to join the assembly without the obligation to give any justification<sup>2</sup>.

Enterprises usually create an organic framework that allows them to coordinate their activities or defend their corporate interests. The legal templates adopted vary according to the goals that companies seek to achieve.

The organic framework can take the form of cooperative companies, associations or associations of common interest, and the structure can have legal personality or may not have it.

As for the objectives pursued by these clusters, they can be limited to collecting data on the evolution of raw material prices or on the search for new techniques to improve productivity. However, the activity of these groupings can have the same consequences as other agreements, such as decisions obliging member companies to apply uniform and predetermined prices.

Accordingly, these groupings were considered prohibited agreements and decisions issued by the grouping are not required to be binding on members, as recommendations of a non-mandatory nature were considered as grouping decisions that would limit freedom of competition<sup>3</sup>.

### **Second requirement: Condition restricting competition**

The legislator does not prohibit agreements between economic operators unless they negatively affect the freedom of competition. Article 6 of the Competition law

<sup>1</sup> BOUTARD- LABARDE Marie -chantal, CANIVET Guy, Droit français de la concurrence, L G D J, Paris, 1994, p.41.

<sup>2</sup> See :

جلال مسعد ، مدي تأثير المنافسة الحرة بالممارسات التجارية، مرجع سابق، ص 83.

<sup>3</sup> SAINT-ESTEBEN Robert, « Droit communautaire de la concurrence », Droit pratique du commerce International, n° 3,1986, P. 440.



provides that practices "have the aim or may be aimed at impeding or impairing the freedom of competition in a market".

The legislator distinguishes between two cases:

- The first case is the prohibition of the practice in view of the object or purpose of the agreement (first section).
- The second case is that the practice is prohibited given the potential future effects on freedom of competition (second section).

### **First section: Given the object of the agreement**

Agreements and acts shall be prohibited if they are likely to lead definitively or potentially to impede or limit the freedom of competition in the same market or in an essential part thereof, and this is stipulated in Article 6 of the Competition Law: "Practices shall be prohibited ... when aiming or could aim to impede the freedom of competition...." This article stated the legislator's desire to prohibit all behaviors, even those that are not sure to affect the principle of freedom of competition.

In this case, Agreements are prohibited when their object or purpose is to restrict free competition. In this case, it is sufficient to prove the contradiction between the object of the agreement and the principle of free competition. The law does not require that the agreement have entered into force or have restrictive effects on free competition<sup>1</sup>. This includes the practice of sharing markets or deals between a group of companies before submitting offers, and in the activity of production, distribution, services and import, this activity was introduced by the legislator in the amendment of Ordinance No. 03-03, under Law 08-12, which is an intervention in one of the marketing operations, and the activity of public procurements. The Algerian legislator has added this activity in an amendment to Ordinance No. 03-03 under Law No. 08-12 by including a new image of prohibited agreements related to public procurements, in the text of Article 6 in its last paragraph.

The scope of prohibition in public procurements includes the method of tender. The scope of prohibition in public procurements includes the method of tender, from the day of the announcement of the tender until the final award of the procurement, without extending this area to the method of mutual consent, because the administration has the discretion to choose the contractor.

The reason for the legislator's inclusion of this important activity may be due to his desire to protect the national economy and ensure the proper use of public funds.

<sup>1</sup> MAC CARTHY Niamh, «la loi britannique sur la concurrence, de 1998 », Revue de Droit des Affaires Internationales, N° 5, 1999, p.522.



## Second section: Given the potential effects of the agreement

In addition to prohibiting agreements and various practices aimed at restricting and impeding competition, Article 6 prohibits agreements that may have adverse effects on competition.

It is noted that condemning the agreement for its harmful effects on competition does not mean that these effects must be realistically in the market, but it is sufficient that these effects are likely to occur, as soon as the threat of obstructing competition can be condemned<sup>1</sup>.

In this second case, the element of conspiracy is not required, but it is sufficient to prove that it is likely to affect the market and have restrictive effects on the freedom of competition, regardless of the will or intention of the parties to agree<sup>2</sup>. Under this picture are horizontal agreements between several companies with similar activity aimed at setting a minimum price for the sale of products, and the possible effects of this joint determination are artificially high prices.

Finally, with regard to the requirement to restrict competition, it applies to agreements regardless of their object or object. In this regard, Article 6 of the Competition Law mentions some cases, such as the agreement on the control of production, the sharing of markets or deals, and the obstruction of the determination of prices according to the law of supply and demand, but this article refers to these cases for example, but not exclusively, which gives the Competition Council broad power to decide on other cases not provided for in the competition act<sup>3</sup>.

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<sup>1</sup> For more details see:

جلال مسعد، مدي تأثير المنافسة الحرة بالممارسات التجارية، مرجع سابق، ص 71.

<sup>2</sup> BOUSCANT Rémy, « La faute dans les infractions aux règles de la concurrence en droit européen », Revue trimestrielle de Droit européen, n°1, 2000, p. 67.

<sup>3</sup> BLAISE Jean Bernard, Droit des affaires : Commerçant, concurrence, distribution, LGDJ, Paris, 1999, p. 395.



## THE SECOND TOPIC:

### **The specific nature of the prohibited agreements sanction**

The sanction of prohibited agreements has two main features: the first is the follow-up procedure that follows investigations into these anti-competitive practices (first requirement), and the second is the marked reduction of the judge's competence to exercise control over such acts and actions (second requirement).

#### **First requirement: The Prohibited Agreements Inspection**

The process of examining previously restricted competition agreements before the provisions of Ordinance No. 95-06 on competition repealed by Ordinance 03-03, is carried out on a transitional basis<sup>1</sup>, and the inspection is carried out by conducting an investigation (first section) and when the Competition Council is informed of these agreements by their owners, and if this condition is met, they are granted a legal exemption (second section).

#### **First section: Investigation Procedure**

The investigation phase begins with the appointment by the Council of the qualified person to carry out the investigation process from among the persons mentioned in the text of Article 49 bis, paragraph 04 of Ordinance n° 03-03 and Article 49 of Law n° 04-02<sup>2</sup>, officers and agents of the judicial police are qualified to carry out economic investigations related to various types of anti-competitive practices, as well as administrative agents in charge of economic investigations, competition, prices, quality and the suppression of fraud, as well as rapporteurs of the Competition Council and finally agents classified at least 14th grade belonging to the Ministry in charge of trade, on the basis of special qualification.

It should be noted that such investigations can be initiated either by the Competition Council after a petition by a victim or on its own initiative or by the Director in charge of competition at the state level<sup>3</sup>.

As for the procedural aspect, investigators are free to search for documents and visit places, as they cannot be prevented from doing so under the pretext of professional secrecy<sup>4</sup>.

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<sup>1</sup> See, Art 72 of Ordinance No. 03-03, previous reference.

<sup>2</sup> Law No. 04-02 of June 23, 2004, laying down the rules applicable to commercial practices, JORA n° 41, 2004.

<sup>3</sup> Law No. 04-02 of June 23, 2004, previous reference.

<sup>4</sup> Executive Decree No. 95-364 of November 11, 1995, laying down the inventory procedures for retained goods, JORA n° 68 of 1995.



After conducting these investigations, a report is drawn up containing the findings of the investigators and the legal adaptation of the practices under investigation<sup>1</sup>. The Competition law provides that such reports and records shall have legal authority until they are challenged by forgery.

The Rapporteur-General, for example, searches various documents that help to establish anti-competitive practices and collects all possible evidence, material or intangible, such as evidence and indicators.

The Rapporteur-General is an example who searches various documents that help to establish anti-competitive practices and collects all possible evidence, material or intangible, such as evidence and indicators. Within this phase, he may also take provisional measures, which are an update of Ordinance 03-03, with the aim of protecting economic interests from imminent irreparable damage<sup>2</sup>.

After proving the practices restricting competition, the General Rapporteur prepares his reasoned final report and deposits it with the Competition Council, which in turn informs it to the concerned parties and to the Minister in charge of trade to determine the session, which is considered the main stage in the work of the Competition Council, and then determines its date by the Competition Council in accordance with Article 55 after summoning each of the General Rapporteur and the members of the Competition Council, and the Minister in charge of Trade and the parties concerned, but the legislator did not explicitly provide for this summons after announcing all Parties The session shall be held with the availability of a quorum, which is two-thirds of the members of the Council, which is 9 members in accordance with the text of Article 26, paragraph 2, and the work of the session shall proceed with respect for the principle of confidentiality of the sessions in accordance with the text of Article 28, paragraph 3. The session ends with the Competition Council issuing its decision to take a penalty.

### **Second section: Exemption System**

The legal exemption for prohibited agreements falls within the framework of the direct intervention of the legislator in regulating certain economic activities due to circumstances necessitated by necessity or crisis, bearing in mind that this exception was not referred to by the Algerian legislator in Ordinance 65-06 on competition, but came within the framework of Ordinance 03-03.

The procedures for enacting this legal text and stating the cases of its application presuppose consultation with the Competition Council, although this consultation is

<sup>1</sup> Executive Decree No. 95-364, previous reference.

<sup>2</sup> Art 49 of Ordinance No. 03-03, previous reference.



optional, and this is understood in Article 35 of the Competition Law, which states: "The Competition Council shall give its opinion on every matter related to competition if requested to do so by the Government, and shall make any proposal in the areas of competition"...

The consequence of the existence of this legal license for prohibited agreements is to exempt their parties from condemnation and prosecution, and thus becomes a legitimate basis to justify their violation, and the legislator stipulated this special exception in Article 9, which states stipulates: "Agreements and practices that ensure economic or technical development shall be authorized." Thus, not all agreements that would limit or restrict the freedom of competition are prohibited but authorized if they help to ensure economic or technical development, in which case such agreements or practices are not subject to the aforementioned investigations. In this case, the Competition Council must be informed of these agreements by their owners in order to determine the extent to which they contribute to ensuring economic or technical development. If this condition is met, it is granted a legal exemption.

In this case, the Competition Council must be informed of these agreements by their owners in order to determine the extent to which they contribute to ensuring economic or technical development. If this condition is met, it is granted a legal exemption.

The mission of the Competition Council is particularly difficult, as processing such requests for exemption requires a balance between the benefits of the agreement and the damage it is likely to cause<sup>1</sup>.

### **Second requirement: The marked contraction of jurisdiction competence**

Under Law No. 89-12 of July 5, 1989 on prices, prohibited agreements were subject to the jurisdiction of the judge. Under Ordinance No. 95-06, this competence was transferred to the Competition Council (first section), so that the judge retained only a limited area of competence, and Ordinance No. 03-03 retained the same provisions of Law No. 95-06 (second section).

<sup>1</sup> On the complexity of agreements and the impossibility of establishing objective criteria that would allow their implications to be assessed, see:

أبوعيد الياس جوزف: المؤسسة التجارية، دار بيروت للنشر، بيروت، 1983، ص 175.



## First section: Initial Competence of the Competition Council

The Competition Council<sup>1</sup> is an independent administrative body<sup>2</sup> that oversees anti-competitive practices, and is the public control authority in the field of competition, established on the basis of Article 16 of Law 95-06 on Competition, which was repealed by Ordinance No. 03-03, but the repeal and amendments came to strengthen the role of the Competition Council in the economic field, as it was entrusted with the tasks of maintaining and ensuring the realization of the principle of free competition and the protection of the public economic order<sup>3</sup>.

It should be noted that with regard to the rules of notification, the law is flexible as it allows the Council to notify economic agents affected by the agreements, local groups, economic and financial bodies, professional and trade union associations, as well as consumer protection associations in addition to the Minister in charge of Trade, and finally the Council can consider cases on its own.

In this context, the Competition Act provides for the rejection of appeals and exemption from prosecution if the duration of the cases in question exceeds three years, which establishes the triple statute of limitations for prohibited agreements. On the other hand, the Board must respond to the petitions filed before it within a maximum period of 60 days from the date of receipt of the case. After receiving the petition and if the Council considers that the facts contained are supported by conclusive evidence, it shall issue decisions ordering an end to the illegal practices and specifying a time limit for this purpose. In the event of failure to carry out these orders, the Council shall take the administrative penalties provided for in the law:

Temporary closure of suspicious shops for a maximum period of one month and seizure of goods, a fine equal to at least twice the profit achieved by these practices, provided that this fine does not exceed four times this profit.

Finally, the Competition Law stipulates that decisions issued by the Council shall be subject to appeal before the Judicial Council of the City of Algiers, which decides on

<sup>1</sup> Council is composed of 12 members appointed for a period of 5 years by presidential decree (5 members of the corps of judges, including the president, 3 members from among competent personalities in the economic field and 4 members from among professionals) on the functioning of the Council. See: Presidential Decree No. 96-44 of January 17, 1996, setting the rules of procedure of the Competition Council, JORA No. 5 of 1996.

<sup>2</sup> See, ZOUAIMIA Rachid, « Le conseil de la concurrence et la Régulation des Marchés en droit Algérien », Revue IDARA, volume 18, n°2, 2008, p. 9.

<sup>3</sup> نجاة سعيود، "النظام القانوني للاتفاقات المحظورة في القانون الجزائري"، مجلة البحوث في العقود وقانون الأعمال، العدد الأول، ديسمبر 2016، ص 48.



commercial matters<sup>1</sup>, within a period of one month starting from the date of receipt of the decision, which is considered as a new exception to the organic criterion enshrined under the Civil and Administrative Procedure Code due to the administrative nature of this body.

### **Second section: Marginal jurisdiction of the judge**

The competition law aims not only to protect the public interest, but also to protect private interests by determining the invalidity of prohibited agreements and compensation for damages resulting from them, and the role of the judiciary in the field of follow-up of prohibited agreements is to appeal against the decisions of the Competition Council.

The Competition Law provides for the jurisdiction of the criminal judge in one case, which is the case in which a natural person bears personal responsibility in the implementation of the prohibited agreement. In this case, the file is transferred by the Competition Council to the prosecutor, and the judge can sentence the person concerned to imprisonment from one month to one year.

It should be noted that penal prosecution remains pending the intervention of the Competition Council.

The civil judge is competent to hear claims for the invalidity of prohibited agreements and actions aimed at establishing civil liability for the economic aid concerned. In this regard, the Competition Law stipulates that the lawsuit shall be filed by consumer protection associations, professional associations and any person who has an interest in this<sup>2</sup>, Any person affected by a prohibited agreement may file a lawsuit for its annulment, in accordance with Article 13 of the Competition Law and compensation for damages resulting there from in accordance with Article 48 of the Competition Law.

The legislator granted the competence of the Council of the Judiciary of Algeria, the Commerce Chamber, to consider the appeals filed against the decisions of the Competition Council, and the appeal shall be filed by the concerned parties or the minister in charge of trade, within a period not exceeding 30 days from the date of receipt of the decision, and this appeal does not have any effect of the position of the decisions of the Competition Council, but the President of the Council of the Judiciary of Algeria may, within a period not exceeding 15 days, suspend the

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<sup>1</sup> The Algerian legislator imitated the solution contained in the French Competition law represented in the order of December 1, 1989.

<sup>2</sup> For a comparison on the subject of interest in filing a lawsuit, see: MAC CARTHY Niamh, « La loi britannique sur la concurrence de 1998 », *Revue de Droit des Affaires Internationales*, n° 05, 1999, p. 521.



implementation of the measures provided for in Articles 45 and 56 of the Competition law and this is when circumstances so require. After the Council of the Judiciary of Algeria has taken its decision, it sends it to the Minister in charge of Trade and to the President of the Competition Council<sup>1</sup>.

### **Conclusion:**

Following the liberalization of the economy and the adoption of the liberal model, the legislator codified the legal mechanisms that represent the backbone of this system, including free competition and the suppression of all actions that restrict it. He searched for appropriate legislation in comparative systems to translate the French legislation of 1986, and the competition law was reviewed to keep pace with development and to respond to the desires of the industrialized countries.

The legislator sought to prohibit every agreement that would restrict competition, categorically or potentially in the market, or even in part of it, By expanding the scope of the prohibition, both in terms of object, as it includes many different economic activities and sectors, and in terms of effects, in addition to the prohibition of agreements restricting competition of great importance, which is the field of public procurement.

However, this does not mean that there are no shortcomings, for associations and professional associations, although they do not practice economic activities permanently, the principle of prohibition is applied to them, as well as for public persons, the application of the principle of prohibition will see many difficulties with regard to the issue of jurisdiction.

And there are shortcomings with regard to the question of who is competent to hear appeals against decisions of the Competition Council, as well as ambiguity about the powers vested in the ordinary judge when hearing such appeals. As a simple example, it can be noted that exemptions should be extended to several situations, such as if the agreement prevents privileges for the benefit of consumers or the case of an agreement between the parent company and its subsidiaries.

Finally, regarding to the field of business, is concerned, it is a field that evolves rapidly and keeps pace with technological development, so it requires legal regulation because everything that is new has loopholes that lead to the emergence of practices other than those we know in the law, and is what calls for the rapid intervention of the legislator to regulate the market for the purpose of overcoming the obstacles that may guide the State in this challenge.

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<sup>1</sup> Art 65 of Ordinance No. 03-03, previous reference.



## Bibliography List:

### I : In Arabic language :

#### • Books :

- أبو عيد الياس جوزف: المؤسسة التجارية، دار بيروت للنشر، بيروت، 1983.

#### • Theses :

- جلال مسعد ، مدي تأثير المنافسة الحرة بالممارسات التجارية، (رسالة لنيل درجة الدكتوراه في القانون ، فرع قانون الأعمال )، كلية الحقوق والعلوم السياسية ، جامعة تيزي وزو ، 2012.

#### • Articles :

1. نجاة سعيود، "النظام القانوني للاتفاقات المحظورة في القانون الجزائري"، مجلة البحوث في العقود وقانون الأعمال، العدد الأول، ديسمبر 2016.
2. بوسعيد ماجد، *الاتفاقيات المحظورة المقيدة لمبدأ حرية المنافسة*، مجلة المفكر للدراسات والعلوم القانونية والسياسية، العدد 02، ورقلة، 2018.

### II : In French language :

#### • Books :

1. BOUTARD-LABARDE Marie-chantal, CANIVET Guy, Droit français de la concurrence, L G D J, Paris, 1994.
2. BLAISE Jean Bernard, Droit des affaires : Commerçant, concurrence, distribution, LGDJ, Paris, 1999.

#### • Articles :

1. SAINT-ESTEBEN Robert, « Droit communautaire de la concurrence », Droit pratique du commerce International, n° 3, 1986.
2. PAPPALARDO Aurélio, « La réglementation communautaire de la concurrence : les dispositions du traité C.E. et de droit dérivé relatives aux ententes entre entreprises, à l'abus de position dominante et au contrôle des concentrations », Revue Internationale de Droit Economique, n° 3, 1994.
3. MAC CARTHY Niamh, « la loi britannique sur la concurrence, de 1998 », Revue de Droit des Affaires Internationales, N° 5, 1999.
4. BOUSCANT Rémy, « La faute dans les infractions aux règles de la concurrence en droit européen », Revue trimestrielle de Droit européen, n°1, 2000.
5. ZOUAIMIA Rachid, « Le conseil de la concurrence et la Régulation des Marchés en droit Algérien », Revue IDARA, volume 18, n°2, 2008.

#### • Legal texts :

1. Law No. 89-12 of July 5, 1989 on prices, JORA No. 29 of 1989. (Repealed).



2. Ordinance No. 95-06 of January 25, 1995 relating to Competition, JORA No. 09 of 1995. (Repealed).
3. Ordinance No. 03-03 of July 19, 2003, on competition, amended and supplemented, JORA n° 43, of July 20, 2003.
4. Law No. 04-02 of June 23, 2004, laying down the rules applicable to commercial practices, JORA n° 41, 2004.
5. Law No. 08-12 of June 25, 2008, on Competition, amending and supplementing Ordinance No. 03-03, JORA No. 36, of June 2, 2008.
6. Law No. 10-05 of August 15, 2010, on Competition, amending and supplementing Ordinance No. 03-03 of July 19, 2003, JORA n° 46, of August 18, 2010.
7. Executive Decree No. 95-364 of November 11, 1995, laying down the inventory procedures for retained goods, JORA n° 68 of 1995.
8. Presidential Decree No. 96-44 of January 17, 1996, setting the rules of procedure of the Competition Council, JORA No. 5 of 1996.