



ANTI-COMPETITIVE PRACTICES ACCORDING TO THE ALGERIAN LAW

Chouaib DIF*

University of Djelfa

chouaib.dif@univ-djelfa.dz

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Abstract:

In this article, we attempt to shed some light on the so-called anti-competitive practices addressed by the Algerian legislator. The text in question is Order 03-03 of 19 July 2003, as amended and supplemented.

These practices are essentially linked either to prices and the treatment of economic agents, or to producers agreements.

Keywords: Anti-competitive. Practices. Algerian law. Competition.

Introduction:

Since 1989, after adopting a market economy, Algeria has carried out a number of reforms to prepare for a new economic system. One of these changes was the Competition law, which was introduced in accordance with Order No. 95-06 of 25 January 1995 on competition and price freedom. This law abolished the old law on prices, which was no longer compatible with the new situation.

The article 37 of the 1996 Constitution, as amended in 2016 and 2020, enshrines the freedom of initiative on which the market economy is based. The same applies to Order 03-03, the fourth article of which states: ‘The prices of goods and services are freely determined on the basis of the rules of competition. This does not mean that the public authorities are absent; on the contrary, they must ensure that the market functions properly by protecting the rules of competition between the various economic agents.

On this basis, the Algerian legislator has developed a conceptual framework for competition, in particular following the promulgation of Order 03-03 of 19 July

*Corresponding author□



2003 on competition. This raises the question of how this text deals with anti-competitive practices. What are these practices? How has the Algerian legislator reacted?

THE FIRST TOPIC : EXCLUSIONARY PRACTICES

In order to exclude their competitors, some companies resort to a range of practices, some of which relate to pricing and others to negotiation. We will attempt to deal with these practices in the next two requirements.

FIRST REQUIREMENT: EXCLUSIONARY PRACTICES BASED ON PRICING

Price is an effective weapon in competition, but the Algerian legislator has provided for only two articles in law 03-03 on competition, namely articles four and five.

The article four (04)¹ stipulates the principle of freedom to set prices for goods and services on the basis of the rules of competition. There is, however, one exception: the State may restrict this principle under the conditions set out in Article Five². This is when the State considers that these goods and services are of a strategic nature or in the event of an excessive increase in them due to a serious disturbance, disaster or supply difficulties within a specific sector of activity or in a specific geographical area, or in the case of natural monopolies. We will therefore discuss arms pricing mechanisms as an anti-competitive method, addressing: aggressive pricing and price discrimination, as well as the problem of price control.

Firstly Aggressive pricing

This is used by monopolistic companies in a specific product market to eliminate competitors in the market. We will first look at the concept of pricing, and then at how to determine the presence of aggressive pricing. 1- The concept of aggressive pricing: Reducing prices below the cost level and increasing production with the aim of subsequently obtaining a monopoly on the market. Or achieving a monopoly position and imposing high prices to compensate for the losses incurred during the period of aggressive pricing. This method is sometimes called dumping if it is practiced on the markets of two different countries.

This method is sometimes referred to as dumping if it is practiced in the markets of two different countries. Aggressive pricing is defined as pricing below cost with the aim of destroying competition and getting rid of competitors in order to create a price higher than the prevailing price, leading to a monopoly in that market. It is notable for being international in nature, as it is difficult to produce



locally, because if it drives competitors out of the market, it means that the exit cost is low, and therefore the transition to a low-cost market, which opens the way for new competitors to enter, and it is then not possible to compensate for the loss. Various laws have prohibited this pricing because of the fundamental damage it does to competition and the expulsion of other competitors after monopolizing market forces³.

How to determine the presence of aggressive pricing is an important question. Aggressive pricing is difficult to distinguish from other competitive pricing. Some have set out criteria to determine its existence. Some of them have relied on the criterion of intention, according to which the price cut must reach a significant degree that reflects the company's intention to destroy its competitor. The US courts relied on the criterion of aggressive intent and not on the low price. Some of them have adopted an objective standard, which is the average variable cost. By this we mean the total costs incurred by the company in terms of production requirements and raw materials, which vary according to the volume of production divided by the number of its units. If the company reduces its prices to a level below the average variable cost, this is proof of aggressive pricing.

The American courts have used this standard. But some of them have reverted to the aggressive intent test and adopted the average variable cost test as simple evidence that can be proven by clear evidence⁴.

This method is adopted by multinational companies who try to sell their products at a price below the real cost of goods in the short term so that they can be unique on the market, and then they are able to raise prices to compensate for the losses. This is detrimental to local businesses and projects, the workforce and the consumer.

Secondly: Price discrimination

We will look at the concept of price discrimination and its foundations.

1- The concept of price discrimination This gives one consumer an advantage over another on the market. There is a difference in the concept between economists and lawyers. Economists believe that price discrimination consists of imposing different prices on different sales of the same product, despite the same expenditure. Lawyers believe that price discrimination consists of imposing different prices on different sales of the same product.

Lawyers do not recognize the existence of price discrimination when the prices are identical despite the difference in expenditure. Their definition of price discrimination means the sale of two products of similar quality, regardless of the similarity or difference in expenditure.

2- Foundations of price discrimination: These foundations are the geographical basis and the consumption basis. Price discrimination based on geographical areas: If the monopolist uses price discrimination based on different



geographical areas, it sells the same product on different markets at different prices in order to get rid of its competitors. the prices are lower than the average variable cost or higher than the changing average cost. Price discrimination based on the consumer. The monopolist practices price discrimination by selling the same product at different prices on the same market to different consumers, i.e. by favoring one consumer over others. The aim is to retain consumers or attract new ones. Price discrimination is regarded here as unfair competition, but the problem here is the difficulty of proving price discrimination, because the seller can argue that there is a competitive price from one of the competitors. This has forced him to reduce the price of this product. Price monitoring. This raises the question of the effectiveness of price monitoring in reducing practices that are contrary to competition rules. A pricing policy cannot replace a competition policy, despite the absence of a competitive culture. Price control policies are of limited benefit in the event of poor competition. The difficulty here is that poor competition is not the only source of price rises, but rather of product shortages at national or even international level. In the event that the State decides to set prices, as provided for in the exception set out in Article Four of Law 03-03 on competition. As a result, traders will refuse to sell at a price lower than the price at which they purchased the product, which will result in the loss of the product on the market. As a result, traders will refuse to sell at a price lower than the price at which they purchased the product, which will result in the loss of the product on the market. Consequently, fixing the price here has no positive result, because. the price will fall, but the product will be lost from the market. Pricing must therefore be left to its own devices, and this must be offset by financial support for families, individuals and those on limited incomes. This is confirmed by the experience of many countries, France for example, which has abolished price-fixing, discovering that it is a problem. ineffective means of controlling competition, even at the level of economic activity.

In addition, the administration in general is not in a good cognitive position due to its lack of entry into the institution, and control must therefore be targeted and qualitative⁵.

SECOND REQUIREMENT: EXCLUSIONARY PRACTICES BASED ON TREATMENT

The law prohibits conditions governing relations between producers and distributors if they are intended to undermine the rules of competition and restrict the commercial freedom of traders. The trader must therefore retain the freedom to set the resale price to customers without the producer intervening to impose prices and force the trader to respect them. The freedom to compete on the market



requires that all economic players remain independent in their decisions, whether to set prices or enter the market. We know that freedom of commercial transactions is a general rule, since every company has the right to do business with whomever it wishes, and in return it has the right to refuse to cooperate with whomever does not wish to do business with it, provided that this refusal is not motivated by the creation of a new monopoly or the maintenance of an existing monopoly on the market. Although this general rule is approved by the general rules of commercial transactions, the Algerian Competition Act stipulates and regulates it in detail, as set out in Article Six below. Similarly, Article 7 states: On this basis, we can list certain practices related to refusal to sell, which are naturally considered to be unfair commercial practices. Maintaining resale prices. The producer required distributors, whether wholesalers or retailers, to resell specific products at a specific price, not lower than the specified price. If the supplier noticed that his distributor was lowering his prices below the specified price, he would refuse to deal with him and put him on the no-sale list, and might even encourage other distributors to refuse to deal with him and not supply him with the product. Setting up barriers to market entry. Refusal to deal can also be used as a barrier to market entry and prevent new competitors from entering the market if a company with a high degree of monopoly power refuses to sell a water product to its competitors, except at a very high price, even though it is selling it to other companies at a very low price and perhaps below cost price, this leads to the exit of their competitors from the market. Implicit collusion is also considered to be a form of refusal to deal, insofar as certain companies refrain from dealing with competitors who wish to limit their activity on the market and then withdraw from it definitively. Freerider practices : One of the cases associated with refusal to deal is that of parasitic competition, known as free rider practices.

This term means that a company benefits from the advantages that another company has obtained in relation to a product without making any effort to obtain these advantages⁶. Thus, in free-rider practices, the company loses all the profits from the sale of the product it has developed. This leads the company to refuse to deal with other competitors or to refuse to sell this product despite its existence, unless it has obtained patents confirming its eligibility for this innovation and development. Refusal to sell is therefore not always linked to the objective of monopoly and control, as it may be a legitimate reason.

The American justice system has adopted the rule of investigating the reason to find out the extent of the legitimacy of the refusal or not to sell, because it studies the reason and analyses the elements of restriction of freedom of trade or competition in each case through careful research, such as the refusal to negotiate affecting prices and productivity, which harms the process of competition.



THE SECOND TOPIC : PRODUCERS AGREEMENTS

The following topic includes deals with what producers may have as agreements between them to put the competition in danger. So, they can damage it. We talk about; grouping and monopoly.

FIRST REQUIREMENT: ECONOMIC CONCENTRATIONS

In this section, we describe the concept of concentration, as follows

Firstly: The concept of grouping

The law does not specify a specific notion for the concept of 'concentration', but case law defines it as establishments on an oligopolistic market using an agreement between themselves to achieve their interests. If this agreement is in writing, it is called a producers' union or cartel, and if it is in secret, it is called collusion. The agents in both models assume that the existing establishments will behave as if they were a single institution in a complete monopolistic market and will seek to obtain the maximum common profit and distribution between them by fixing prices, because if they continue to compete with each other by reducing prices, this will lead to higher costs and lower returns for each of them.

As a result, each plant will find that it is in its interest to enter a cluster or progress to a multiplication, so that each plant sells its output at a similar price to other plants. Although there is a strong incentive for each establishment to cooperate and agree with its competitors in order to maximize the common profit between them, it should be noted that there is a strong incentive for individual establishments or their members to cheat or deceive secretly, away from collusion. agreements, in order to increase their share of the common profit. As a result, frequency agreements in the oligopolistic market tend to be unstable. This is the case if the agreement is illegal, collusive or legal, as is the case with the card. The biggest example of this is OPEC, the violation of quotas by its members.

Secondly: Forms of concentration

The law specifies the problem of concentration in the text of Article 15⁷ of the Law 03-03 on competition, where grouping takes place in accordance with this article in the event of the merger of two or more previously independent establishments. Or when one or more influential natural persons acquire at least one establishment, or one or more establishments, acquire some or all of them, directly or indirectly, by taking shares in the capital, or by purchasing elements of the assets of the establishments, or by virtue of a contract or by any other means.

The text of Article 16⁸ explains this paragraph of Article 15, where it is noted that control here means control resulting from contract law or other methods which, individually or collectively, depending on the circumstances, give the possibility of exercising a definite and permanent control. influence over the activity of an institution, in particular as regards: Rights of ownership or rights of



usufruct over the property of an institution or over part thereof. Rights or contracts of the institution which. It results in a strong influence on the institution's bodies, whether in terms of its formation, deliberations or decisions. The third form of grouping is the creation of a common institution which performs all the functions of an independent economic institution on a permanent basis. The legislator has made these groupings, which would be detrimental to competition, especially if they led the institution to dominate the market, subject to the following conditions. The Competition Council is required to take a decision within three months.

Thirdly: Concentration size

After ascertaining the nature of the project in light of the requirements of the Competition Order. It is necessary to observe the limit set by the legislator by applying the text of Article 17⁹, which is set at more than 40% of the sales made in a particular market by the text of Article 18¹⁰.

To determine the market share, the national consumption of the product in question must be assessed, in addition to determining the turnover achieved in the market by those involved in the assembly process. The market in question here is the national market, but 40% is not the only criterion. It is possible to refer to other standards or norms approved by Executive Decree no. 2315 of 14/10/2000, which specifies the standards for evaluating assembly projects, which are represented by the market share held by each economic aid in the assembly process, as well as the market share affected by this process, Article Two, paragraph one of this decree.

Market share is determined by the ratio between the turnover of each specific economic agent operating on the same market and the general turnover of those economic agents present on the same market, whereas French law relies on the turnover standard to organize and control the group economy, in addition to requiring a 25% sales percentage, This is estimated at the equivalent of 650 euros, free of charge, provided that at least two of the establishments involved in the merger generate sales of at least 107,700 euros. French law therefore relies on the ratio of sales to absolute value, which requires the establishments concerned to generate specific sales on the national market.

SECOND REQUIREMENT: ABUSE OF A DOMINANT MARKET OR MONOPOLY POSITION

We aim to address the different cases of domination that can be an abuse in market so in competition.

Firstly: Abuse of a dominant market position

An institution's dominant position on the market means that the institution is in a position that enables it to play a fundamental role on the financial market for goods and services without any other competitor being able to offer significant alternatives, either to the customers or to the suppliers of the institution in that position.



Executive Decree no. 00-314 of 14/10/2000, under its third article, defined the relevant market, which stipulates that the reference market or part of the market for determining the dominant position means the goods and services offered by the economic aids and the alternative goods and services that can be obtained by concessionaires or competitors in the same geographical area. There is no doubt that to speak of arbitrary practices leads us to evoke Article 24 bis of the Civil Code, which sets out the provisions relating to arbitrariness as follows: The arbitrary use of a right constitutes a fault, in particular in the following cases : If it occurs with the intention of harming another person. If the aim is to obtain a small benefit in relation to harming others.

If its purpose is to obtain an illegal advantage. Article seven of Order No. 03 03 on competition listed the cases of abuse resulting from market domination, and we note that the aforementioned Executive Decree No. 03-14 provides for other cases in its article five, which are: Maneuvers to control market entry. Expected or actual harm to competition.

Secondly: Abusive exploitation of the monopoly position

The term monopoly has Greek origins and consists of two parts, monos polien, which means to sell in its entirety, which means that monopoly means the presence of a seller who sells alone, because this concept used to be linked to absolute monopoly, in which there is one company that controls the market for a specific product, so it produces and sells it alone, but with the emergence of competition, absolute monopoly has become unavailable. In its absolute form, we now speak of a duopoly or oligopoly. Before discussing the notion of monopoly, it is important to highlight the two types of monopoly, which are represented as follows: Organized monopoly, i.e. that which is regulated by the government, is a legal monopoly. Natural monopoly, which exists without government intervention, was created because of the technological superiority of one company over the rest of its competitors. We can divide oligopolies into two types: Oligopoly is characterized by the following: Having a small number of producers controlling the market.

There is disagreement about this small number. Some think it should not exceed 10, others three, but there are those who use different expressions, such as the first four or the seven sisters¹¹.

In general, an oligopoly exists as long as these producers control 50% of the total production destined for a specific market. Here we cite the example of three American companies. General Motorsport Chrysler represents 96.6% of the market for passenger cars sold in America. 2- Interdependence between producers: Decisions taken by producers often have a fundamental impact on the price of products and the profits of competitors. Therefore, before making a decision, each producer must anticipate what its competitor will do in order to preserve its



customers and protect itself on the market. 3-The presence of strong restrictions and obstacles to market entry. Entering an oligopolistic market is very difficult, and anyone who wants to enter must do so. To be able to break this monopoly and enter as a powerful competitor who can later join these few and dominate the market to a large extent. A monopoly can be said to exist when a company or commercial establishment enjoys a great deal of power in a market which enables it to control that market by reducing output, raising prices, eliminating existing competitors and preventing established or new competitors from entering that market in order to control its profits and increase its market share. All this will only happen in a specific market. The truth is that it is not enough for a commercial enterprise to have monopoly power in the water market to be able to monopolise that market, but for it to be involved in actions. and actions to maintain that power. It resorts to an arbitrary practice aimed at maintaining the monopoly. Various international agreements and organizations have stipulated the need to combat such anti-competitive behaviour, for example Article Eight of the General Agreement on the Definition of Customs and Trade in Gas obliging contracting parties to control monopoly producers in monopoly territories. centre. With reference to Algerian law, Order 03-03 prohibits such competitions in accordance with Articles 10¹² and 11¹³, in addition to Article 12¹⁴.

Conclusion:

It appears to us from this study that the Algerian legislature has provided for most of the practices contrary to the rules of legitimate competition, but that it has dealt with them more generally than specifically by referring to the regulations on the implementation of certain articles, which empties the law of its content and makes it more of a formal framework than an objective one, because with the government's input in setting the rules, it takes care to protect those affected by these inappropriate practices. It will also confuse the case as to the issues before it.



¹Article 04: The prices of goods and services are freely determined in accordance with the rules of free and fair competition. Free pricing is understood to mean compliance with the provisions of the laws and regulations in force as well as the rules of equity and transparency concerning in particular : - The price structure of production, distribution production, distribution, provision of services and services and imports of goods for resale in the same condition as received; - Profit margins for the production and distribution of goods or provision of services; - Transparency in commercial practices

²Article 05: Pursuant to the provisions of article 4 above, it may be carried out, by regulatory means, to the fixing, capping or approval of margins and prices of goods and services or families homogeneous goods and services. Fixing, capping or approval of margins and prices of goods and services are taken on the basis of proposals from sectors concerned for the main reasons following: - the stabilization of price levels of goods and essential or broad services consumption, in the event of a significant disturbance of the market; - the fight against speculation in all its forms and preservation of the purchasing power of consumer. Can also be taken, in the same forms, temporary measures of fixation or capping margins and prices of goods and services, in the event of excessive and unjustified increases prices, caused, in particular, by a serious market disruption, calamity, difficulty sustainable supply in a sector given activity or geographic area determined or by monopoly situations natural.

³Nadher MOHAMED ECHEMMERI, Mohamed MOUSSA ECHEROUF, Introduction to the science of economy, Dar Zahran for publishing and distribution, Amman, 2008, p 62.

⁴Amel MOHAMED CHALABI, Legal regulation of competition and antitrust, Modern office publisher, Alexandria, Egypt, 2008, p 126.

⁵Frédéric JENNY, Competition law enforcement and regulation for digital ecosystems: Understanding the issues, facing the challenges and moving forward, Concurrences, competition law review, OECD Competition committee, Paris, 2012, p 40.

⁶Hussein MOHAMED FETHI, Monopolistic practices and business alliances to undermine freedom of trade and competition, Dar Al Nahda, Cairo, 2004, p 104.

⁷Article 15: Under the terms of this Order, a concentration is effected where :

1. Two or more previously independent undertakings independent undertakings merge,
2. One or more natural persons who already control of at least one company, or, one or more undertakings, acquires directly or indirectly, whether through the acquisition of capital or purchasing assets, contract or by any other means, control the whole the whole or parts of one or more other companies
3. The creation of a joint venture performing, on a lasting basis, all the functions of an autonomous economic entity.

⁸Article 16: The control referred to in point 2 of Article 15 above, derives from contractual rights or other means which alone or jointly, and having regard to the circumstances of fact or of law, the possibility to exercise decisive and lasting influence over the business of an undertaking and in particular:

1. Rights of ownership or enjoyment over all or part of the part of the assets of a company ;



2. Rights or contracts of the organization that entail a definite influence on the organization's organs in terms of their composition, deliberations, or decisions.

⁹ Article 17: Mergers that are likely to harm competition, in particular by strengthening the dominant position dominant position in a market must be submitted to the Competition Council, which will decide on it within three (3) months.

¹⁰Article 18: The provisions of Article 17 above shall apply whenever the concentration is aimed at achieving a threshold of more than 40% of sales or purchases made on a market.

¹¹ Nadher MOHAMED ECHEMMERI, Mohamed MOUSSA ECHEROUF, Introduction to the science of economy, Dar Zahran for publishing and distribution, Amman, 2008, p 259.

¹²Article 10: A practice is considered to have the effect of preventing, restricting or distorting free competition and competition and is prohibited, any act and/or contract, whatever their nature and purpose, granting an undertaking an undertaking an exclusive right to carry on an activity that falls within the scope of this Order

¹³ Article 11: An organization is prohibited from abusing the dependence on another organization as a customer or supplier if this violates the rules of competition.

In particular, this arbitrariness consists of:

Refusal to sell without legal justification.

- Concomitant or discriminatory selling.

- Selling conditional on the acquisition of a minimum quantity.

- The obligation to resell at a lower price.

- Cutting off the commercial relationship simply because the customer refuses to submit to unjustified commercial conditions.

to unjustified commercial conditions.

- Any other act that reduces or eliminates the benefits of competition within a market

¹⁴ Article 12: The following are prohibited: price offers or price practices prices to consumers that are unreasonably low in relation to in relation to the costs of production, processing and marketing costs, where such offers or practices or may have the effect of eliminating from a market or preventing access to a market, an market, an undertaking or one of its products.

Bibliography List:

-First: legal texts

- The Algerian Constitution.

- The law number 89-02 of 07 February 1989, relating to prices.

- The order number 95-06 of 25 January 1995, relating to competition.

- The order number 03-03 of 19 July 2003, relating to competition.

- The order number 08-12 of 25 June 2008, modifying and completing the order number 03-03.

- The order number 10-05 of 15 August 2010, modifying and completing the order number 03-03.

-Second: books

Nadher MOHAMED ECHEMMERI, Mohamed MOUSSA ECHEROUF, Introduction to the science of economy, Dar Zahran for publishing and distribution, Amman, 2008.

Amel MOHAMED CHALABI, Legal regulation of competition and antitrust, Modern office publisher, Alexandria, Egypt, 2008.



Hussein MOHAMED FETHI, Monopolistic practices and business alliances to undermine freedom of trade and competition, Dar Al nahda, Cairo, p 104.

-Third: Articles

Frédéric JENNY, Competition law enforcement and regulation for digital ecosystems: Understanding the issues, facing the challenges and moving forward, Concurrences, competition law review, OECD Competition committee, Paris, 2012.