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QUESTIONNAIRE ON THE CHALLENGES FACING YOUNG COMPETITION AUTHORITIES

Contribution from Algeria

-- Session III --

This contribution is submitted by Algeria under session III of the Global Forum on Competition to be held on 19 and 20 February 2009.

Contact: H el ene Chadzynska, Project Manager of the Global Forum on Competition
Tel: 33 1 45 24 91 05; Email: helene.chadzynska@oecd.org

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QUESTIONNAIRE ON THE CHALLENGES FACING YOUNG COMPETITION AUTHORITIES

--Algeria--

1. Introduction

1. Algeria is currently in the implementation phase of a process of substantial economic reform launched in the 1980s, including a comprehensive policy to open up its economy to the international market. One milestone in the process has been the signing of an Association Agreement with the European Union.
2. Furthermore, Algeria is negotiating membership of the WTO and has also launched a process that should lead to a trade agreement with the EFTA countries.
3. Algeria has accordingly begun implementing a programme to bring up to standard the legal and institutional framework of its economy, with a view to optimizing the conditions under which it will join the process of globalisation and trade with the European Union.
4. With this in mind, and to ensure the continuity of the economic reform process under way for several years now, the Algerian government adopted Order No. 95-06 of 25 January 1995 on competition. The Order was subsequently repealed and replaced by Act No. 89-12 of 5 July 1989 on prices.
5. As part of the comprehensive upgrade of its legislation and regulations, that Order was then reviewed and replaced by Order No. 03-03 of 19 July 2003 on competition.
6. Following an assessment and diagnosis of its application, the above Order was recently amended by Act No. 08-12 of 25 June 2008, amending and supplementing Order No. 03-03 of 19 July 2003 on competition, with a view to further enhancing the effectiveness of this legislative framework.
7. The current legislation therefore complies with international standards and the requirements of a market economy.
8. The purpose of these arrangements is to establish a genuinely competitive market. They accordingly lay down rules to safeguard competition and ensure transparency and fair competition in business relations.
9. Within that context, the legislative framework has reviewed the human aspects of the Competition Council, which is the autonomous authority in charge of regulating/monitoring the market and imposing penalties for anticompetitive practices. The Council has also been afforded every prerogative to carry out its mandate and responsibilities. Furthermore, it has the authority to sign co-operation agreements with regulatory authorities at home and abroad.

2. Legislative arrangements relating to competition

2.1 Order No. 03-03 of 19 July 2003

10. Order No. 03-03 of 19 July 2003 on competition is aimed at establishing a competitive market environment, preventing restrictive practices and controlling economic concentrations in order to boost economic efficiency and enhance consumer welfare.

11. The Order covers the following:

1) Restrictive practices:

- Cartel agreements;
- Abuse of dominant position;
- Abuse of economic dependence (**Article 11**);
- Creating monopolies by means of exclusive procurement contracts (**Article 10**);
- Predatory pricing (**Article 12**).

12. The current Order also includes a new provision establishing a preventative, instructional measure to counter cartel agreements and abuse of dominant position, through the introduction of negative clearance.

13. The new provisions also introduce **leniency measures**, whereby the Competition Council may decide to reduce a fine or refrain from imposing a fine.

2) Economic concentrations:

With regard to economic concentrations, the new Order reasserts the Competition Council's competence in this field. Economic agents must notify the Council of any concentration transactions that might undermine competition and exceed a threshold of 40% of sales or purchases in a given market.

3) Competition Council:

- The Competition Council is an autonomous authority, with a legal personality and financial independence;
- It acts in an advisory and adjudicatory role;
- It may work and exchange information with sector-specific regulatory authorities and with its counterparts abroad.

To that end, membership of the Council has been reduced to **nine permanent members**.

Of those nine members, two are magistrates while the other seven are chosen from among key figures renowned for their legal or economic competency or their expertise in matters of competition, distribution or consumer affairs.

2.1 Act No. 08-12 of 25 June 2008 amending and supplementing the Order on competition

14. Here, the new arrangements include improvements to the Competition Council's remit, organisation and *modus operandi*. The review and enhancement of the Council's organisational and legal framework were prompted by the fact that it had been in existence for a number of years and by the mismatch between its *modus operandi* and the role that this type of institution should play in regulating the economy and implementing the rules on competition.

15. The improvements made to this piece of legislation include:

- 1) Extending the Competition Council's mandate to cover public procurement, which is a potential source of uncompetitive practices;
- 2) Prohibiting any action or contracts conferring exclusivity for an activity, in order to prevent economic agents from achieving a monopoly position on a market;
- 3) Conferring on the Competition Council a mandate to regulate the market and enhance the way distribution channels are organised and run on the domestic market;
- 4) Giving the Competition Council powers to take any necessary steps to consolidate its autonomy, in the form of regulations, directives or circulars to be published in the Official Bulletin on Competition, given that competition is a complex field that requires ongoing extension work;
- 5) Organising and developing co-operation and the exchange of information between the Competition Council and all sector-specific regulatory authorities;
- 6) Refocusing the organisation, mandates and composition of the Competition Council, which will now comprise twelve members, drawn from three categories, namely:
 - 6 legal/economic experts, with responsibilities in the field of competition, distribution, consumer affairs and intellectual property;
 - 4 professionals with experience of production, distribution, self-employed crafts, services and the liberal professions;
 - 2 representatives of consumer associations.

This is aimed at strengthening the Council's economic expertise and its powers to penalise restrictive practices;

- 7) Raising the fines imposed by the Competition Council to a level that is genuinely dissuasive, since the amounts currently imposed as penalties are very much out of date;
- 8) Setting criteria to guide the Competition Council in setting penalties, referring in particular to the harm done to the economy, the profits made by the offending parties and the size of the enterprise concerned. This approach is intended to ensure rationality and equity in this field, thereby enhancing the institution's credibility.

3. Overview of the work of the Competition Council

3.1. Cases resolved

16. The main cases of distortion of competition resolved by the Competition Council can be summarised as follows:

1) Competition Council versus the SNTA (*Société Nationale des Tabacs et Allumettes*) :

The Competition Council imposed a fine of 768 000.00 DA on SNTA, the national tobacco/match corporation, for abuse of dominant position, and even monopolistic and discriminatory behaviour towards its clients. The case was brought before the Council by a client who had been a victim of such practices. The evidence concerned the following breaches:

- Discriminatory selling: the SNTA was favouring some of its clients by supplying as many as 1 000 packets per shipment, while others were receiving only 100 packets or seeing their orders refused;
- Speculative holding: the SNTA was withholding its goods in order to speculate by influencing market trends.

2) Competition Council versus the ENIE (*Entreprise Nationale des Industries Électroniques*) :

The Competition Council fined the ENIE (national electronic industry corporation) some 4 348 560.00 DA for abuse of dominant position and discriminatory practices towards its business partners.

The case was brought before the Council by a group of economic agents that were victims of these anticompetitive practices, which worked as follows:

- Certain clients were provided with storage space on ENIE premises, which constituted preferential treatment, as this lowered or eliminated their storage costs;
- Selective supplying (some clients received more goods than ordered, while others received no goods at all);
- Clients were subject to discriminatory terms of payment, with some being asked for an advance payment of only 19% of the full cost and others for 30%;
- Business partners were given discounts for large orders. As the enterprise was a selective supplier, the discounts were confined to preferential clients only.

This enterprise abused its dominant or even monopolistic position on the market, which it had gained through its status as the country's leading distributor of electronic goods, its vast distribution network (sales/display outlets and after-sales service centres) and its flourishing financial situation. Furthermore, the operator had no real or potential competitors capable of competing for its market share.

3) Competition Council versus SAFEX:

In 2000 the Competition Council reached an out-of-court agreement that SAFEX (Algerian fairs and exhibitions corporation) would stop discriminating against some of its clients. The public corporation had been abusing its dominant position by not charging its affiliates for using exhibition and sales venues, while other economic agents had to pay a fee.

3.2. Cases currently before the Council (see Annex I)

4. Assessing application of the law

17. An assessment has shed light on the following points:

- Competition culture:

Currently inadequate, it is hampering the introduction of rules on market competition.

The greatest challenge facing the Competition Authority is the lack of a competition culture.

The fact that the competition culture is inadequate is hampering the development of competition policy. While the economic and institutional environment is marked by management rules appropriate for a market economy, there is still evidence of hesitant and uncertain behaviour on the part of economic players, and of a reliance on the State.

- The informal market:

The informal market virtually took over the entire domestic economy back in the early 1990s, when it became a refuge for a small portion of the labour force seeking a means of subsistence.

However, the opening up of the export market turned the informal market from a marginal phenomenon that was tolerated into a social phenomenon that is currently said to account for an estimated 35% of GDP.

The phenomenon covers virtually every sector of activity and involves secret, fraudulent practices that prevent the free play of competition on the market.

- Training and information:

There is a need to provide more training for judges, particularly in specialised fields such as competition law. Ignorance of specific economic legislation among some judges has meant that some particularly complex disputes have been mishandled.

Furthermore, inadequate investigative resources, poor training and the need for better skills among those in charge of enforcing competition regulations, compounded by a lack of economic information on the status and running of the market and on market players, mean that the necessary inquiries cannot be conducted.

5. Challenges and outlook

18. On the basis of the above appraisal, and to remediate the basic inadequacies it has revealed, the requisite measures should focus on the following:

- Developing a comprehensive inter-sectoral approach (including the Competition Council, Customs, and the Finance Inspectorate) to ensure the necessary efficiency in combating the informal sector. When the informal sector is restricted, unfair practices decline and the rules of competition become a motivating factor;
- Selecting the members of the Competition Council on the basis of clear competency-related criteria to ensure its efficiency and credibility;
- Putting into place a general framework for all kinds of co-operation in the field of competition so that the Competition Council can work in partnership with foreign Competition Authorities and draw on their experience;
- Instituting a standardised framework for the exchange of competition-related information and experience among the institutions in charge of competition (government departments, the Council and the competition authorities);
- Ensuring that businesses and consumers are familiar with the new reflexes based on the rules governing the market economy, and that this is reflected in their behaviour. Establishing and developing a competition culture is of prime importance in effectively enforcing the law;
- Making the activities of the Competition Council more dynamic and enabling it to play its full role in regulating the market, with a view to promoting competition and creating a ratchet effect among firms and consumers;
- Providing staff in charge of competition (including management, investigators, and Competition Council rapporteurs) with further training that will also promote a competition culture.
- Introducing a mechanism to observe the market and detect anticompetitive practices;
- Building a competition databank;
- Launching initiatives media and extension on competition issues, targeted at institutions and economic players and using modern communication methods such as the Internet;
- Launching a competition newsletter for the dissemination/extension of competition law and publishing any decisions by the Competition Council that create a precedent (Court of Appeal, Supreme Court, State Council);
- Promoting competition in the marketplace. This is in fact the main task of the Competition Council, obliging it to go on the offensive with regard to economic players, and to develop investigative instruments serving to detect, prosecute and penalise breaches of competition law. One means of achieving this is to give the Council full jurisdiction, thereby enabling it to broaden its scope and make its presence felt on the ground.

ANNEX 1

CASES CURRENTLY BEFORE THE COMPETITION COUNCIL

1. Abuse of economic dependence

Business of the plaintiff enterprise	Defendant	Claims by the plaintiff	Sector	Market structure	Comment
Sale and distribution of mobile telephony (telephones, microchips, pre-paid cards)	Private mobile telephone operator	- Abuse of economic dependence - Breaking off business relations solely on the grounds that the partner refuses to accept unjustified business terms	Mobile telephones	The defendant, at the time of the alleged breach, was the only private operator on the mobile telephone market	Case currently before the Council

2. Collusive practices, price fixing

Competing party	Defendant	Claims	Market	Distributor market share	Evidence of anti-competitive behaviour	Comments
Large firm distributing consumables and accessories/equipment for diagnostic imaging	Three enterprises with the same market niche	Price-fixing	- Radiology centres - Diagnostic imaging centres - Public health structures	None of the four enterprises is in a dominant position - the brands represented by these distributors share the market with other major foreign brands	Price fixing between distributors in the presence of the brand's representative	Currently before the Council