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**CHALLENGES/OBSTACLES FACED BY COMPETITION AUTHORITIES
IN ACHIEVING GREATER ECONOMIC DEVELOPMENT THROUGH
THE PROMOTION OF COMPETITION**

Contribution from Algeria

-- Session II --

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COMPETITION LAW AND POLICY IN ALGERIA

Introduction

1. Algeria's first regulations on competition were contained in its 1989 Act on Prices. For the first time, new concepts of cartels and abuse of dominant position entered the legal language through economic reforms which were aimed at transforming the Algerian economy, until that point a centrally controlled economy, into a free-market economy.
2. The 1989 Act, the main aim of which was to provide for the gradual liberalisation of prices of products and services, was repealed by a 1995 Ordinance which set forth in detail the regulations and mechanisms for competition as an economic policy instrument.
3. The most important feature of the Ordinance was the creation of a competition authority responsible for enforcing compliance with competition regulations and market transparency. Since 1995, the Government's role as final arbiter in matters of economic competition and its powers to impose sanctions have been devolved to the Competition Council.
4. Given the rather uninspiring results achieved since 1995, a new Ordinance was added to the legislation on competition and came into force in July 2003.

1. General background

5. The implementation of competition policy was accompanied by a radical change in the characteristics of the Algerian economy, as outlined below.
 - Virtually total price liberalisation, with the exception of a few essential services and products, and the removal of government price controls, which enabled firms to take back possession of a powerful means of resource allocation.
 - The immediate effect of price liberalisation was a widespread, steady increase in prices to levels that pushed the inflation rate up to 30 per cent during the period 1994 to 1997. At this stage, price competition was still unable to come into play.
 - The opening up of the Algerian market and the liberalisation of external trade as well as the elimination of all administrative barriers to imports other than customs duties, stimulated stiff competition between imported products and local ones. Here again, competition was more in the area of quality and product availability than in the area of prices.
 - The Government's withdrawal from the economic sphere, which it transferred to economic agents who were again fully authorised to decide on the optimal allocation of resources without reference to the administration other than as provided under investment promotion mechanisms. A vast privatisation programme of state-held assets was begun and was open equally to domestic and foreign firms on a non-discriminatory basis. However, apart from the hydrocarbons and telecommunications sectors, this programme is not yet delivering the results that had been expected.

- In the course of the past few years, legislation regulating the network sectors has been introduced and the activities of these sectors have been opened up to competition. They include air and maritime transport, telecommunications, electricity and gas distribution, and banking and financial services, the goal being to promote competition in these sectors for which regulatory authorities have been set up.

6. Although the implementation of competition policy had a positive impact on freeing up energy and promoting initiative and free enterprise, the behaviour of firms, on the other hand, did not have the desired effect in stimulating and maintaining the competitive process. Thus, private monopolies replaced the old government monopolies, especially in the imports sector. The abusive use of exclusive purchase contracts and share-outs of the market and procurement zones clearly shows that the behaviour of firms was far from removed from economic competition and the uncertainties and constraints imposed by market transparency.

2. State of competition and barriers to it

7. How can we assess competition during the period 1995 to 2002. What impact has the implementation of competition law had on securing a market economy and what lessons can we learn from our assessment?

8. Statistical analysis of the activity of the Competition Council shows that the number of claims related to competition was low during the period 1995 to 2002. Of a total of 80 referrals to the Council over the entire period, only around 10 related to restrictive practices. The others related to unfair practice - - which is not within the jurisdiction of the Council but of the ordinary courts -- or were referrals for an opinion on the prices of products or services that did not come under the free pricing regulations.

9. Useful lessons can be gleaned from the fact that there were so few referrals on restrictive practices, as such practices are barriers to the effective implementation of the principles of competition.

10. The first of these relates to the gradual realisation of the long way still to go until a genuine culture of competition emerges, not only among firms but as a 'way of life', that includes consumer behaviour, too. The legal and institutional context has been radically changed by the adoption of a market economy as a method of governance and clearly shows the path to be followed both by private individuals and firms. However, we still note the persistence of a mentality of dependence on the State along with hesitant behaviour and uncertainty.

11. Paradoxically, economic competition still seems to pertain between the private sector and the public sector, but not within either sector itself. The results show that all of the practices that gave rise to complaints related to the abuse of dominant position by public sector firms. This may seem paradoxical when, today, 80 per cent of the country's added-value is generated by the private sector.

12. The second relates to the share of the informal market in the domestic economy. Since the liberalisation of Algeria's external trade, the informal market, which had played only a marginal, subsistence-level economic role for a negligible percentage of the population has now acquired alarming proportions -- an estimated 30 per cent of GDP. Furthermore, this market which has taken over larger and larger spheres of production and trade, uses unfair practices to exert pressure that prevents the free play of competition and compromises the transparency of the market.

13. The result is that the competition authorities are having real difficulty in trying to establish the extent to which competition is really operating in the market and how enterprises are behaving in each

market. The opaque commercial relations that result from the informal market disrupt the market and undermine the regulatory and decision-making role of the competition authorities.

14. The third point relates to the very activities of the Competition Council. In spite of the powers that the law confers on it, the Council has not managed to find a way to become the unquestioned authority on the market. The rare sanctions it imposes have not provided the desired impetus for competition and have not had a structuring effect on the market in general. Consumers, for their part, are still waiting to see the benefits of competition.

3. Aims and substance of the law

15. Competition law in Algeria is very largely inspired by European legislation and jurisprudence. The entire body of universal guidelines and regulations on restrictive practices is embodied in Algerian legislation.

16. For instance, the law prohibits cartels that distort competition, the abuse of dominant position and the practice of predatory pricing. Economic concentrations likely to give or increase a strong position on the market are subject to the authorisation of the Competition Council.

17. The law applies to all production, distribution and service activities. The law also applies to public entities. The law is not applicable where agreements and practices promote technical or economic progress.

18. None of the practices referred to above is punishable *per se* but only if the effect or purpose of such a practice is to restrict or prevent the proper functioning of the market. The market is the yardstick against which such practices reported to the Competition Council are assessed.

19. The law has vested the Competition Council with general powers to protect competition and to sanction practices that restrict competition. Part of the Council's role is also to advise on regulations that may have an impact on competition. Its opinion may be sought at the request of various institutions and professional or consumer associations.

20. It can issue injunctions and impose fines of up to 7 per cent of the turnover of firms found guilty of restrictive practices. It can also authorise or refuse authorisation for plans to concentrate firms, or authorise them provided that they meet certain conditions to the advantage of competition or consumers.

4. Future outlook

21. In view of the poor results obtained in implementing competition rules since 1995 and for the purposes of correcting the shortcomings that had become apparent, a new Act has just been passed. It is based on two major planks.

22. The first of these concerns the basic need to familiarise and instil firms with the behaviours and reflexes of the market economy. The effort to develop a culture of competition is primordial for the effective application of the law. With this in mind, the new text reduces, quite substantially, the repressive side of the former legislation. It provides for leniency mechanisms so that firms can avoid heavy financial penalties if they undertake never again to have recourse to practices that restrict competition.

23. Furthermore, firms whose behaviour may fall within the scope of restrictive practices can request the Competition Council to issue them a clearance certificate. This certificate enables firms to check whether the Competition Council authorises or rejects the planned behaviour.

24. The second plank is to build up the capacities and functions of the Competition Council.

25. As well as general advisory and decision-making powers to ensure greater market transparency as regards restrictive practices, the Act grants the Council authority over economic consolidation where the effect would be to restrict or prevent competition. Those wishing to effect concentration are required to seek authorisation from the Council.

26. Within its own jurisdiction, the Competition Council is responsible for developing co-operation and co-ordination with the regulatory authorities in charge of public network services. The Act covers co-operation and joint decision-making by the Competition Council and the regulatory authorities whenever a restrictive practice affects a sector that is under the supervision of a regulatory authority.

27. The Competition Council is also called upon to develop co-operative and collaborative relationships with foreign competition authorities with respect to the free exchange of information and inquiries relating to restrictive practices that affect trade relations between countries.