

The Competition Council Between Independence and Dependence

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ABSTRACT

This research paper aims to investigate the extent to which the Competition Council truly distinguishes itself with sufficient independence and non-subordination to the executive authority, allowing it to directly exercise its powers related to market regulation and punishment of practices contrary to free competition.

The Algerian legislator has granted the Competition Council a set of important powers as an independent administrative authority, enabling it to regulate the market and protect free competition. However, it shares executive authority in these matters.

It cannot be said that the Competition Council is fully independent, as its members are appointed by the authority represented by the President of the Republic, especially in the absence of other appointment methods. Despite some required conditions for the President's selection of members, they only relate to the necessary competence for performing their duties.

As for functional independence, there are numerous interventions by the executive authority, particularly in establishing internal regulations. Additionally, the council's funds are considered the Ministry of Trade's funds, being its sole source of income. Furthermore, annual reports are submitted to other entities.

Keywords: Competition Council, Independence, Dependence, Executive Authority.

INTRODUCTION

The Algerian state has adopted an economy based on competition, a requirement of the modern economy that emphasizes freedom in trade and industry but within specific legal frameworks. Therefore, Algeria initiated economic reform policies some time ago to align with the demands of the new system. In 1995, the Competition Council was established, akin to many administrative authorities, with broad powers delegated to it.

The first competition-related law was issued in 1995 under Order 95-06, serving as the legal framework for ensuring fair and honorable competition. Subsequent to this, Order 03-03 outlined conditions for practicing free competition, narrowing the Council's powers by excluding judges from its membership. This was further reinforced by amendments under Law 08-12 and Law 10-05, reflecting the rapid developments imposed by the global economic system.

This research paper aims to investigate the true independence of the Competition Council and its non-

subordination to the executive authority in a manner that allows it to directly exercise its powers related to market regulation and punishment of practices contrary to free competition.

In this context, the following problem statement is posed: **To what extent is the Competition Council independent both structurally and functionally, and does the executive authority's oversight consolidate its subordination to it?**

In the logical framework of the study, the research is divided as follows:

1. The idea of the Independence of the Competition Council.
2. The idea of the Subordination of the Competition Council.

THE IDEA OF THE INDEPENDENCE OF THE COMPETITION COUNCIL.

Independence, in the legal sense, refers to the Competition Council not being subject to presidential and supervisory authority. Despite the Algerian legislature explicitly acknowledging the independence of certain administrative bodies, such as the Postal Authority, Telecommunications Authority, and the Committee for Regulating and Monitoring Stock Exchange Operations (Kato, 2014, p. 268), the Competition Council was granted independence through the 2008 amendment. Article 23 of this amendment states: "An independent administrative authority called the Competition Council is established, endowed with legal personality and financial independence, placed under the Minister responsible for finance." (Law No. 08-12, June 25, 2012)

The extent of the Competition Council's independence from a membership perspective:

The independence of the Competition Council from a membership standpoint can be assessed by examining various elements, particularly its composition, the method of appointing members, and the duration given to them to perform their duties.

Composition of the Competition Council: The uniqueness of newly established independent administrative bodies, with distinct features not found in traditional general administration, leads us to assert their independence. Notably, members of these bodies must possess the qualifications and expertise required for economic regulation. While many independent administrative bodies lack specific criteria for appointing members (Muhtawt, p. 240), the Competition Law fills this gap by specifying that the twelve members of the Competition Council must be known for their legal and economic competence or expertise in competition, distribution, consumption, and intellectual property. The composition includes (Law No. 08-12, June 25, 2012):

- Six members with at least a bachelor's degree and eight years of professional experience in the legal or economic field, with qualifications in competition, distribution, consumption, and intellectual property.
- Four members selected from qualified professionals with at least five years of professional experience in production, distribution, crafts, services, or freelance professions.
- Two qualified members representing consumer protection associations.

Appointing judges alongside professionals and experts in the Competition Council lends it credibility, rigor, and effectiveness in performing its duties. Excluding judges and removing them from the council, as stipulated in the 2008 law, may compromise its credibility and effectiveness.

The note concerns the lack of specific criteria for appointing council members. Laws such as Order 03-03 and Law 08-12 indicate that authorities are not compelled to choose genuinely qualified individuals, leaving broad discretionary power to the appointing authority. This could result in appointments based on criteria

other than specialization and scientific experience, jeopardizing the council's independence and effectiveness.

Some argue that excluding judges from the Algerian Competition Council's composition aims to eliminate its judicial nature, especially considering the emphasis on its administrative character. Additionally, the diversity introduced into the council may enhance its neutrality, independence, and transparent execution of tasks. However, concentrating the appointment authority in one person, the President, may raise concerns about the balance, interpreted by some as an aspect of executive intervention in council regulation (Souhila, 2009/2010, p. 105).

Method of Appointing Competition Council Members: The law does not standardize the method of appointing members of independent administrative bodies. In some cases, members are appointed after a proposal from a public administrative institution. In others, the President appoints and suggests members, as per the Minister responsible for trade, who appoints them by decree (Abdelrazak Al Wafi, 2020, p. 17).

It is deduced from legal texts regulating independent administrative bodies that the President monopolizes the appointment process, especially for Competition Council members, with the exception of members of the committee regulating stock exchange operations, appointed by the Prime Minister based on suggestions from other public institutions.

Appointing Competition Council members in this manner does not embody independence. Therefore, methods of appointment should be diversified or, at the very least, not concentrated solely in one person, the President, but should involve other individuals or entities.

Termination of Competition Council Members' Duties: Article 25/2 of the amended and supplemented Order 03/03, according to Law 08/12, states: "...and their duties shall be terminated in the same manner", Article 25/4 of the same law specifies: "The term of Competition Council members is renewed every 4 years, within the limit of half the members of each category mentioned above", The last paragraph of Article 24 of Law 10/05, amended for Order 03/03, states: "Competition Council members may permanently perform their functions." (Law No. 03-03, 2003)

These materials compromise the independence of the Competition Council members and make them non-neutral in the execution of their duties. Their sole concern becomes pleasing the authority that appointed them, aiming to remain in their positions and avoid being excluded from the renewal process conducted by the President every four years, which determines half of the members from each category.

Despite the stability that members experience during the four-year term, where they cannot be dismissed, the semi-renewal for each category may impact their mindset. Members strive to stay in their positions for the longest possible duration, especially since the last paragraph of the aforementioned Article 24 suggests the possibility of members exercising their functions permanently. Does the legislator intend for members to perform their duties permanently throughout the term?

From the preceding text, before any amendments and other texts that do not imply a second-half renewal in the subsequent renewal, we understand that the renewal authority lies entirely with the President. He has the freedom to renew the members who complete their terms and those who will remain in the council.

All of this naturally leads the member either to align with the executive authority in its directions or risk losing their position in the first renewal. Despite the diverse composition of the Competition Council, they remain non-independent from the appointing authority represented by the President. Additionally, the principle of non-removability is present for a 4-year period but is ineffective as it distinguishes between

members at the end of each term (Ahmed Boumghouas, 2014, pp. 78-79).

Independence of the Competition Council Functionally: The involvement of independent administrative bodies in economic and financial sectors through regulation can only be effective if they have the means to achieve their established goals. However, upon studying the mechanisms of practice for independent administrative bodies.

1. **Internal Regulations:** Most independent administrative authorities, including other entities, are known to establish their internal regulations, as they are more knowledgeable about the internal workings and organization. For example, the Committee for Organizing Stock Exchange Operations and Oversight and the Authority for Postal Services and Communications. In contrast, the Competition Council is different, as Article 31 of Law 08-12 states: “The organization and functioning of the Competition Council shall be determined by executive decree.” (Law No. 08-12, June 25, 2012)
2. **Financial Means:** Financial independence is crucial for any entity’s autonomy, including the Competition Council. Article 23 of Law 08/12, amended for Order 03/03, states: “An independent administrative authority called the Competition Council is established with legal personality and financial independence, placed under the Minister responsible for trade.” Despite specifying legal personality and financial independence, practical independence is not achieved as long as the financial source for the Competition Council is the executive authority, and its funding is limited to the executive authority’s funds. Article 33 of Law 08/12, amended for Order 03/03, mentions: “The budget of the Competition Council is recorded within the trade budget in accordance with legislative and regulatory procedures.” (Law No. 08-12, June 25, 2012)

Consequently, the president of the Competition Council lacks the right to propose financial appropriations, even supplementary ones, which could be requested as needed. Therefore, discussing the financial independence of the Competition Council is not feasible, as mentioned earlier.

THE CONCEPT OF THE COMPETITION COUNCIL’S SUBORDINATION TO THE EXECUTIVE AUTHORITY.

Independent administrative bodies are known for their autonomy, avoiding subordination to presidential authority or supervisory control. However, in the Algerian model, the subordination of independent administrative bodies to the executive authority is evident through various mechanisms of intervention and control over their activities. This is especially true for the Competition Council, which faces intervention and control by the executive authority, alongside overseeing the decisions made by these independent administrative bodies.

Executive Authority’s Oversight on the Competition Council’s Activities:

Intervention in the Competition Council’s Tasks: The Competition Council, comprising twelve members, sees the Minister of Trade appointing a permanent representative and an alternate representative. Additionally, according to Article 26 of Order 03-03, amended and supplemented, the executive authority appoints a secretary-General and five rapporteurs through a presidential decree. This appointment by the executive authority can impact the independence of the Competition Council by intervening in its jurisdiction, potentially compromising its neutrality due to pressure from these appointees advocating the executive authority’s viewpoint (Muhtawt, p. 250).

Moreover, Article 27 of Law 03-03, amended and supplemented, requires the Competition Council to submit an annual report on its activities to the legislative authority, the Prime Minister, and the Minister

responsible for trade. Although this reporting requirement is common for independent administrative bodies, some argue that it weakens their independence, as submitting reports to these entities could be seen as a means of influence (Law No. 03-03, 2003).

In conclusion, the subordination of the Competition Council to the executive authority is apparent through appointments, interventions, and reporting requirements, potentially compromising its autonomy and neutrality.

1. **Impact on the Independence of the Competition Council during Budget Preparation:** The independence of the Competition Council can be compromised during the preparation of its budget. Withholding financial resources for its operations can lead to paralysis and ineffectiveness, hindering the council from carrying out its duties.
2. **Executive Authority's Oversight on the Competition Council's Decisions:** The government holds the authority to intervene in the Competitions Council's decisions, particularly by granting licenses either autonomously if public interest requires it or based on a request from the concerned parties. This intervention occurs in cases where the council has rejected a merger, following a report from the Minister responsible for trade and the minister overseeing the relevant sector.

Therefore, the matter not only pertains to the government's power to make decisions in lieu of the Competitions Council but also involves challenging the decisions made by the council. This is a clear infringement on the independence of the Competitions Council, especially considering that the council previously operated independently in granting or rejecting merger licenses under the Competition Law issued by Order No. 95-06 (Zouaima. R, 2015, p. 110).

Furthermore, the government can independently grant merger licenses, regardless of the Competitions Council's decision, based on public interest or upon the request of concerned parties, Even if the request had been presented to the Competitions Council and the merger license was denied, this could affect the trust between the government and the Competitions Council, Granting the government this authority is considered an encroachment on the Competitions Council's jurisdiction (Ahmed Boumg houas, 2014, p. 81).

CONCLUSION

After studying the topic of the Competition Council between independence and subordination, we can summarize the most important findings:

- The Algerian legislator has granted the Competition Council a set of important powers as an independent administrative authority, enabling it to regulate the market and protect free competition. However, it shares this power with the executive authority.
- In terms of organic independence, it cannot be said that the Competition Council is independent. Council members follow the authority that appointed them, represented by the President of the Republic, especially in the absence of other appointment methods besides direct appointment. Although there are some conditions imposed on the President of the Republic when selecting members, these are mandatory conditions related to the necessary competence to carry out the work only.
- The provisions of Order 03-03 and Law 08-12 indicate that there is nothing forcing the relevant authorities to choose truly qualified individuals. The generality of the terminology used in the order or new law gives the appointing authority wide discretionary power, leaving room for choosing members based on criteria other than specialization and scientific experience. This means that appointments to such positions can be subject to self-imposed criteria, which does not serve the independence and effectiveness of the Council.
- In terms of functional independence, there are many interventions by the executive authority, as it is

responsible for establishing the internal regulations. Additionally, the Council's funds are considered the funds of the Ministry of Trade, its sole source of income, in addition to submitting annual reports to other authorities.

After reviewing the findings, we propose the following suggestions:

- Reconsider the composition of the Council, reintroducing judges to the lineup as was the case in the annulled Order 95-06.
- Reconsider the guardianship over the Council and remove it from the supervision of the Minister of Trade.
- Review Article 70 of Order 03-03, canceling the notification of decisions issued by various judicial bodies to the Minister of Trade. Also, eliminate the sending of reports to the Minister of Trade and suffice with broad publication of its decisions.

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