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**Competition Law and Policy and Global Food Value Chains**

**Contribution**

***The Competition Council***

***Algeria***

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## **Introduction**

The Competition Council, through this contribution, will explain how competition law helps ensure the availability and accessibility of good quality food products to consumers at affordable prices and how the concentration of power in the hands of a relatively small number of dominant companies affects the food system?

The concentration of power in the hands of a relatively small number of companies in the national food system is a crucial issue for many countries, including Algeria, which has recognized for several years the risks linked to the domination exercised by certain multinational companies on the markets of raw materials used in the production of agri-food products, notably those of cereals, milk, sugar, oil, coffee.

The Algerian government is aware of the dangers linked to the concentration of this market at the international level, which can lead to a reduction in competition on the local market and which will result in higher prices for consumers and a power of influence due to the abuse of dominant position or de facto monopoly of certain groups of companies present on the global market of food products deemed essential for human life.

### **I-Reminder of the legal framework preventing the concentration of the food market to ensure the right to food for Algerian citizens**

#### **1- Creation of a Competition Council**

The Algerian legislator created a Competition Council by Ordinance 95-06 of January 20, 1995, in the wake of the political and economic reforms undertaken by our country in the 1990s and, as a corollary, its choice for a market economy.

This institution, established as an autonomous administrative authority with legal personality and financial autonomy, acts in the name and on behalf of the State to enforce the rules of competition in the market.

#### **2-Powers of the Competition Council**

The Competition Council carries out its missions set out in Ordinance No. 03-03 of 19/07/2003, amended and supplemented, relating to competition and which consist of:

- **Sanction anti-competitive practices** such as agreements, cartels, abuse of dominant position, exclusivity and unnotified concentrations;

- **Control market structures and examine concentration operations;** through requests for economic concentrations (mergers-acquisitions-takeovers) to prevent dominant positions and the abuses that may result from them in terms of price, supply, quality and innovation;
- **Issue opinions** on any draft legislative or regulatory text related to competition. It is also consulted by public authorities, businesses, consumer associations, or on its own initiative, on issues related to competition in order to ensure effective application of competition rules in the market.

## **II-Global food security and consumer protection**

### **2-1 Definition of food security**

Firstly, it seems interesting to us to retain the definition given by the Rome Declaration following the World Summit on World Food Security in November 1996, namely: "*Food security exists when all human beings, at all times, have physical and economic access to sufficient, safe and nutritious food allowing them to satisfy their energy needs and food preferences for a healthy and active life.*"

From this definition, it emerges that food security is guaranteed in a country when four requirements are met simultaneously: *the availability of food, accessibility to this food, adequate use and stability of supplies.*

- *Availability*: refers to the volumes of food available in a country, whether they are the result of domestic, agricultural and industrial production, or whether they come from imports, previously constituted stocks or food aid.

- *Accessibility*: which must translate into the possibility for any household and any individual to acquire the necessary quantities of food by drawing on the production that they have been able to achieve, the reserves that they have been able to build up, the barter that they can carry out, the purchases that they can make on the market, the donations or food aid that they can obtain from various sources, or by combining several of these possibilities.

- *Use*: which are forms of use by households of the food to which they have access, these forms must allow each member of the household to fully and completely satisfy their needs in nutrients and energy, in a manner adequate to their age, the nature of their activity, their state of health. Use also includes the forms of preparation of food, the hygienic conditions for preparation, the diversity of the diet and the practices of distribution of food between the members of the household.

-*Stability*: concerns the continued availability of food for all households and individuals, with availability not being called into question even in the event of exceptional circumstances (natural disasters), health crises, social crises, economic crises leading to a drop in income, unemployment and/or a significant increase in food prices.

## **2-2 Specificities of the Algerian food market**

The Algerian food market is characterized by high production for the majority of food products and a dependence on imports for certain commodities, despite significant agricultural potential. Local production of fruits and vegetables is significant, but challenges persist in the development of strategic agricultural sectors such as dairy products. The agri-food industry is a key sector of the Algerian economy, but it faces problems of competitiveness and dependence on imported raw materials.

## **2-3 Key points of the Algerian food market:**

- **Booming food industry:**

Despite low competitiveness, dependence on imported raw materials, and a lack of market regulation, the Algerian agri-food industry is experiencing significant growth, becoming a pillar of the national economy. It represents a significant share of non-hydrocarbon GDP and contributes significantly to employment.

The agri-food sector is booming, with significant growth in recent years. It represents a significant share of non-hydrocarbon GDP and contributes significantly to gross output and value added.

The agri-food industry is a job-creating sector, employing a large number of people and representing a significant portion of the workforce. Like the public sector, the private sector, made up of small and medium-sized enterprises and large industrial groups, is the driving force behind this growth.

- **Growth potential:**

Algeria, with its large consumer market and efforts to modernize its agriculture, has strong growth potential in this sector.

- **Food transition:**

Algerians' eating habits are changing, with the influence of modernity (consumption of processed products, fast food) while maintaining an attachment to culinary traditions.

- **Dependence on imports of certain basic products:**

Algeria imports a significant portion of its consumption of milk and other basic food products, which makes it vulnerable to fluctuations in international prices and variations in supply on international markets and the monopoly exercised by certain farmers on its products.

- **Reduction of food dependency:**

The growth of the agri-food industry contributes to reducing Algeria's dependence on food imports and strengthens its economic sovereignty, as evidenced by the encouragement of public authorities and the facilitations granted to farmers by the State and investors who wish to enter the agricultural production market

- **Efforts to exploit untapped agricultural potential:**

The country has arable land and a climate conducive to agriculture. Despite the existing potential and the efforts made, the agricultural sector needs more investment, the use of new technologies and digital technology, and know-how to increase production capacity for some previously imported food products and also meet the ever-increasing domestic consumer demand.

- **Climatic factors:**

Climate change, particularly drought, impacts agricultural production and water availability, reinforcing the need for sustainable resource management and the rational use of raw materials.

- **Food safety:**

Algeria seeks to ensure its food security by developing its priority agricultural sectors and reducing its dependence on imports, while maintaining affordable prices for consumers.

### **III- Measures taken by the Competition Council to avoid and address the problem of food safety**

#### **3-1 active monitoring of concentrations and mergers;**

The Competition Council constantly monitors concentrations in the food market, which is subject to abuse of dominant positions and which presents a high concentration, which facilitates agreements.

Concentrated markets result in the presence of a small number of players such as farmers, agri-food producers, and distributors in small and large stores. This market situation is more favorable to the exchange of commercial information, easy to coordinate, less risk of being competed in the absence of new entrants or competitive pressure since companies can easily know each other, monitor each other and agree, possibility of concluding informal agreements between the players in this market to distribute customers, set prices and limit production to the detriment of the end consumer who will be deprived of its products in terms of quality, supply and availability.

Like the foreign authorities responsible for ensuring the application of competition rules, Ordinance No. 03-03 of 19/07/2003 requires in its articles 17 to 22 the author(s) of any economic concentration (acquisitions/mergers etc.) likely to harm competition, to submit their concentration projects to the Competition Council in advance.

Article 18 of the aforementioned order requires notification to the Competition Council of these projects each time the concentration aims to achieve a threshold of 40% of sales or purchases made on the market.

This upstream control carried out by the Competition Council on these operations aims to prevent the creation of monopolies or very strong dominant positions and the abuses which may result from this in terms of price, supply, quality and innovation for the consumer in particular and the economy in general.

The provisions of Article 19 of the same ordinance require the Competition Council to seek the opinion of the Minister responsible for trade and the Minister responsible for the sector concerned before authorising or rejecting, by reasoned decision, this concentration.

The relevant ministries to which the Competition Council transmits the merger project file must give their opinion within the three-month period set by Article 17 of Ordinance No. 03-03 of 19/07/2003 cited above.

In any event, the Competition Council will rule on the request for authorization notified to it within the legal period of three (03) months.



The second <sup>paragraph</sup> of Article 19 provides that the authorisation of the Competition Council may be accompanied by requirements designed to mitigate the effects of the concentration on competition and that the companies behind the proposed concentrations may themselves enter into commitments intended to mitigate the effects of competition.

The same article opens a right of appeal against the decisions of the Competition Council in matters of economic concentration before the Council of State.

The Government may, as provided for in Article 21 of Ordinance No. 03-03 of 19/07/2003 cited above, override the decision to refuse the merger by the Competition Council by automatically authorising the merger if the general interest justifies it on the basis of reports from the Minister responsible for trade and the Minister responsible for the sector concerned by the merger or at the request of the parties concerned .

The conditions and procedures for requesting authorization for concentration operations are determined by Executive Decree No. 05-219 of June 22, 2005 relating to authorizations for concentration operations.

### **3-2 Prohibitions on agreements**

Agreements are prohibited (Article 06 of the aforementioned order) when their object or may have the effect of preventing, restricting or distorting the play of free competition in the same market or, in a substantial part of it, concerted practices and actions, express or tacit agreements and understandings and in particular the fixing of prices, market sharing and distribution of geographical areas, sources of supply, limited or controlling production, limited access to the market, etc.;

The Council dealt with a case relating to the soft drink market or the operators of this market who are grouped into a professional association and who agreed on a single increase in the prices of the drink to the detriment of consumers.

### **3-3 support small and medium-sized enterprises**

The Competition Council authorizes agreements and practices resulting from the application of a legislative or regulatory text and authorizes agreements and practices whose authors can prove that they have the effect of ensuring economic or technical progress or that they contribute to improving employment or which enable small and medium-sized enterprises to consolidate their competitive positions on the market (article 09 of order no. 03-03 cited above).

### **3-4 prohibitions of abuse of dominant positions**

The Competition Council constantly monitors the food market value chain through the practice of economic monitoring and the carrying out of sectoral studies (article 37 of the aforementioned order no. 03-03) in order to understand the functioning of competition in its markets, their supply and demand structures, market shares of the players and the behavior of these actors.

The detection of abuses of dominant positions comes from complaints from companies, consumers and associations that are victims of the practice in question.

The Council may initiate proceedings on its own initiative in the event of suspicion of the existence of competition infringements on the market (Article 44, first paragraph of Ordinance No. 03-03 cited above).

### **3-4 Sanctions for restrictive practices and concentrations**

The Council sanctions anti-competitive practices of agreements and abuse of dominant positions with a fine not exceeding 12% of the turnover excluding tax achieved in Algeria or during the last financial year (article 56 of the aforementioned order 03-03).

Furthermore, it imposes a fine of two million Algerian dinars (2,000,000 da) on any natural person who personally participates in the organization and implementation of practices that restrict competition.

The Council may order companies to cease practices that restrict competition or impose interim measures on them by imposing periodic penalty payments (Article 58 of Ordinance 03-03 cited above).

It also sanctions economic concentrations carried out without the Council's agreement with a fine of up to 7% of the turnover excluding tax achieved in Algeria during the last financial year.

### **3-5 Competition Rules Compliance Program**

The compliance program is a mechanism by which companies or organizations voluntarily agree to respect competition rules and adhere to the values and objectives on which they are based, and take a set of concrete actions intended to enable them to ensure compliance with these rules, to detect possible breaches and to take the necessary measures to put an end to them and to prevent their recurrence.

The Council encourages companies to establish a competition rules compliance program, whether on a stand-alone basis or by integrating it into their

commercial, consumer, tax and public procurement compliance policy, and to devote the necessary resources to ensure its success.

To this end, the Council has sent the compliance program to economic operators in different sectors of activity, mainly those operating in the agri-food sector, professional associations, consumer protection associations to encourage them to equip themselves with a tool that will enable them to prevent competition infringements.

## **V-Consolidation of the State's efforts to ensure a stable supply of food products**

The Algerian government has implemented a comprehensive approach combining agricultural, commercial, logistical and regulatory policies to ensure a stable supply of food products in order to guarantee food security for its population, avoid pestilence and preserve social peace.

### **4-1 strengthening of national production**

This approach is reflected in the revision of the legal framework governing investment through the adoption of the new investment code which facilitates access to the market and improves the transparency of the business climate.

**4-1-1** Strengthening investment in the local agricultural sector, incentives for farmers, crop diversification and support for livestock and fishing.

**4-1-2** develop storage and distribution infrastructure which results in the construction of silos for the storage of cereal products in order to avoid post-harvest losses.

**4-1-3** Reorganization of wholesale markets for better regulation and traceability of commercial flows and to avoid illicit storage and speculative practices.

**4-1-4** digitalization of distribution and logistics which will allow real-time monitoring of the flow of transported goods.

### **4-2 the use of imports**

In order to overcome excessive dependencies in food, Algeria is diversifying its suppliers and creating food security stocks to avoid repercussions on the national market in the event of disruption to the international food market (wheat, powdered milk, sugar, oil, dried vegetables, etc.).

### **4-3 regulation of the national market**

This approach involves regulating supply and distribution chains and monitoring, through the services of the Ministry of Internal Trade and National Market Regulation, the prices and margins of food products sold to consumers in order to prevent speculation.

### **4-4 digitization and transparency**

The Ministry of Commerce has implemented a national mapping system to monitor food product stocks and flows in real time, and to identify their traceability in order to avoid stock shortages and diversions through a dedicated digital platform.

### **4-5 launch of awareness and responsible consumption campaigns**

Algerian consumer protection associations conduct awareness campaigns on every occasion aimed at consumers to encourage responsible and sustainable consumption.

### **4-6 intersectoral consultation and coordination**

Coordination is carried out between the Ministries of Agriculture, Trade, Industry and Finance to ensure a regular and sustainable supply of food products, and enable their accessibility to consumers at affordable prices.

### **4-7 promulgation of the law relating to the fight against illicit speculation dated December 29, 2021**

The speculation law comes in a context of persistent tension on widely consumed food products, and the disruption of supply and demand in this market, which has negatively impacted the availability and accessibility of consumers to these products, which leads to a decrease in the purchasing power of consumers, following the excessive rise in the prices of basic food products for human life.

To counteract this phenomenon, the public authorities promulgated a law relating to illicit speculation during the year 2021 (law 21-15 of 12/28/2021).

According to the law, any storage or retention of goods or merchandise intended to cause a shortage or disruption of supplies at the market level, and any artificial increase or decrease in the prices of goods or merchandise, or banknotes, directly or indirectly, or through an intermediary, or the use of electronic means or any fraudulent means or channels, is considered illicit speculation.

It also concerns "the dissemination of false or slanderous news or information propagated, knowingly, in the public in order to cause a disruption of the market and a sudden and unjustified rise in prices, the use of offers on the

market to cause price disruptions or the exceeding of profit margins fixed by law, the presentation of offers of prices higher than those usually practiced by sellers, the exercise, individually, collectively or by agreement, of an action on the market with the aim of benefiting from a gain not resulting, in a natural way, from supply and demand, the use of practices aimed at increasing or decreasing the value of banknotes".

The text of the law specifies in its article 3 that the State takes charge of the development of a national strategy to ensure a balance at the market level, by means of the stabilization of prices, and the restriction of illicit speculation in order to preserve purchasing power, and to take all measures to eliminate illicit speculation.

These include, among other things, "guaranteeing the availability of essential goods and merchandise on the market, adopting monitoring mechanisms for taking appropriate measures to mitigate the effects of shortages, encouraging rational consumption, taking the necessary measures to combat the spread of false information with the aim of causing market disruptions and anarchic and sudden price increases, prohibiting any unjustified storage or withdrawal of goods and merchandise with the aim of creating a shortage in order to increase prices."

Noting that local authorities contribute to the fight against illicit speculation, as do civil society and the media, the law provides in its chapter relating to penal provisions that illicit speculation is punishable by imprisonment of three (3) years to ten (10) years, and a fine of 1,000,000 Algerian Dinar to 2,000,000 Algerian Dinar.

The prison sentence of ten (10) years to twenty (20) years and the fine of 2,000,000 Algerian Dinars to 10,000,000 Algerian Dinars concerns speculation on cereals and their derivatives, dried vegetables, milk, vegetables, fruits, oil, sugar, coffee, fuels and pharmaceutical products.

## **Conclusion**

In Algeria, the State is making considerable efforts to ensure effective application of competition rules in the food market, within a framework of transparency, by establishing a solid legal arsenal and control bodies to ensure regulation of the food value chain.

The Competition Council plays a role in regulating competition, monitoring and ensuring the prevention of anti-competitive practices and imposing sanctions in the event of violations of competition rules, in order to guarantee a fair market for consumers and businesses.

Algeria has adopted Law 03-03 of 19/07/2003, amended and supplemented, relating to competition, which allows for the regulation of competition, including regulations specific to the food products sector.

This law aims to prevent anti-competitive practices such as illegal agreements and abuses of dominant positions, and at the same time, it allows the conclusion of agreements organizing its relations with foreign competition authorities having the same powers (article 43 of the aforementioned order).

The Ministry of Commerce intervenes to control the food market by implementing a series of measures to monitor prices, ensure the availability and accessibility of quality food products at competitive prices for consumers and combat unfair commercial practices through Law 04-02 on commercial practices.

Other regulatory bodies intervene to ensure the stability of supply and demand and avoid supply disruptions on the national market.

Finally, to enable the application of competition rules in the global food value chain, national competition authorities are called upon to strengthen their international cooperation through the signing of bilateral and multilateral agreements and membership in international competition institutions to enable the exchange of information on the existence of anti-competitive practices such as cross-border agreements and cartels in global food markets to ensure their treatment.