NEGOTIATION IN ALGERIAN COMPETITION LAW: THE SPECIFICITY OF THE PROCEDURE

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Abstract
Notwithstanding its punitive nature, competition law nonetheless opens a doorway for negotiation. The process of this negotiation intrudes - de jure - into the traditional powers of enforcement. In this regard, the Algerian legislator drew inspiration from its counterparts, notably the French and European Community legislators, who have already highlighted specific alternative forms that frame this rather novel negotiation. However, the Algerian procedure is partially and partially distinct.
This study aims to provide an understanding of the reality of the potential existence of negotiation within Algerian competition law, by showing and/or demonstrating its actual positioning, even its specificity.
***Keywords**: competition, Algerian law, negotiation, exemption, competition council, implicated companies*

INTRODUCTION.

Despite its repressive nature, Algerian competition law allows for a loophole of negotiation on the side[1].
In this regard, the Algerian legislator drew inspiration from its French and European counterparts, who have already highlighted specific forms adjusted according to the quality of negotiation and/or cooperation. Consequently, competition authorities can offer leniency in various forms in exchange for cooperative behaviors.
These alternative legal tools, which are supplementary to the traditional powers of repression, allow for greater involvement of the "companies under investigation" in the decision-making process of the Competition Council and/or the competition authority. They demonstrate attractive advantages on various levels, both for competition authorities - such as the reduction of evidentiary burdens, faster processing of cases, and assistance in developing a competition culture - and for the companies under investigation, who can benefit from exemption from or a reduction in the imposed sanctions.
However, it cannot be claimed that negotiating the incurred sanctions in "comparative" competition law represents a panacea for all competitive issues, as such negotiations are still not without their flaws.
As for negotiations subject to Algerian competition law, they are undoubtedly governed by a specific negotiated procedure under this law. This study aims to clarify the reality of the existence of negotiation in Algerian competition law and determine where this negotiation can effectively be positioned.
To this end, it seemed necessary to take into account several factors that are more or less directly related to Algerian law, especially those concerning the clear lack of legislation in this area and the lack of practice by the Algerian Competition Council.
The scope of the negotiation process discussed in this study mainly concerns anti-competitive practices.
Considering the four scenarios of negotiated procedures that are actually present in the international competition arena, particularly in European and French law, this is precisely why it

seemed necessary to project the Algerian procedure and its positioning in relation to other procedures, specifically in the context of anti-competitive practices.

From the outset, the term "anti-competitive practices" already poses a terminological concern, as the Algerian legislator, unlike its European and French counterparts, has not adopted any terminological distinction between what is restrictive to competition and what is anti-competitive.

To avoid any terminological confusion, we will treat the concept of anti-competitive practices as a subset of restrictive practices of competition within the meaning of Algerian law[2].

Undeniably, the motivation for negotiation, and even collaboration, varies depending on the reward. The opposite is also true: If the offender is cooperative enough and demonstrates dedication in dealing with the competition authority, they may be treated more favorably compared to others who abstain.

In any case, the scope of negotiation within a negotiation process can only lead to two situations: a potential total exemption (1) and a potential partial exemption (2).

1. In the context of a potential total exemption

Clearly, the attractiveness of negotiation in competition law stems from the fact that by negotiating with the competition council and/or authority, an offender who pleads guilty can benefit from complete immunity from the imposed sanction. This opportunity arises for offenders in two favorable situations: leniency (1.1) and voluntary commitments (1.2).

1.1. In terms of leniency: The other procedure!

Applied in European law since 1996[3], drawing inspiration from the American experience[4], and subsequently reformed in 2002[5], 2006[6], and most recently in 2015[7]. In France, its main principles were highlighted by the NRE law (New Economic Regulations Law of May 15, 2001), which, after codification, can be found in Articles L. 464-2 and R. 464-5 of the French Commercial Code.

Leniency is a negotiated procedure that involves rewarding a company (or an individual) that confesses its involvement in a cartel before or during an investigation. By focusing on the procedure in comparison to French and European rights, its name reflects both the granting of complete exemptions from monetary sanctions and partial exemptions or reductions of fines, paradoxically mirroring its effect of clemency.

It appears that the Algerian legislator did not truly incorporate the leniency procedure in its amended and supplemented Ordinance 03-03 concerning competition[8].

There is only one single provision (Article 60) that refers to the characteristics of an adopted negotiated procedure, but it does not provide the guidelines for this procedure.

From the outset, in terms of reward, this article mentions the attractiveness of leniency by mainly stipulating a reduction in the amount of the fine up to total exemption, but it is merely an illusion.

Indeed, the reward is not the leniency procedure itself; it is only for its effect.

In any case, the leniency procedure is a creation specific to US law, translated into European law and notably adopted by French law, and it includes specific conditions at the expense of the reward.

However, the specific conditions of this procedure are lacking in the provisions of the aforementioned Algerian article, especially the requirement for a formal request from the concerned company before any investigation is initiated by the Competition Council[9].

Similarly, regarding the Association Agreement between Algeria and the European Union[10], just by reading Chapter 2 under the title "Competition and Other Economic Provisions," it is clear that the alternative or negotiated procedures, including leniency, are completely neglected.

It should be noted that the Directorate of Competition of the Algerian Ministry of Trade does not really share this opinion. Not only does it disregard the specific conditions related to leniency, mainly neglecting that Article 60 of the amended and supplemented Ordinance 03-03 refers to the contentious phase where the investigation is indeed initiated, but it also acknowledges the adoption of the leniency procedure for the abuse of dominant position practice[11], even though the procedure - in its entirety - exclusively applies to prohibited agreements!

Indeed, cartels are indeed the only anti-competitive practice (or competition-restricting practice, according to Algerian law) eligible for this procedure.

The concept of collective or joint abuse of dominant position cannot even be mentioned, as the Algerian legislator only recognizes individual dominant position[12]. Therefore, the procedure is completely unsuited to unilateral practices by a company in a dominant position.

However, even if French doctrine - in theory - leaves room for this hypothesis, it is difficult, if not impossible, for a company to provide evidence of the existence of collective abuse of dominant position before conducting an investigation. This is because the company must first prove the existence of a real collective dominant position and then prove the abusive exploitation of that position, making this hypothesis practically inconceivable.

Besides, if we refer to the provisions of the successive European Commission communications regarding the leniency procedure of 2002 and 2006, the emphasis is undoubtedly placed on the possibility of obtaining the desired immunity for offending companies even after the initiation of an investigation.

But, practice prefers and/or requires that the denunciation occurs before the investigation, even before the instruction phase. This is indeed an investigation that will undoubtedly lead to the identification of the offense and may involve a certain verification process, in relation to a "quasi-judicial" preliminary investigation already initiated by the authority.

This investigation remains somewhat perplexing regarding the establishment of the alleged offense, which certainly poses a daunting task for the competition authority.

In this regard, we can highlight the causal link between the denunciation through a formal request for immunity and the initiation of an actual investigation to meet the needs of a leniency procedure.

However, the suspension of the Algerian Competition Council's activities for more than a decade (from 2003 to 2013) surely had a negative impact on the implementation of this procedure.

Even though the Algerian competition ordinance has been amended and supplemented twice in 2008 and 2010, the almost non-existent practice of a competition council that was "absent" would not be able to establish direct contact with the needs of a properly functioning competitive market.

Finally, it is still important to understand the scope of a negotiated procedure such as leniency and its impact on achieving a healthy competitive environment, through at least two points. The first relates to the procedure and its challenges, while the second concerns the history of this promising procedure.

Regarding the first point of the procedure and its challenges: Indeed, the risk of facing severe sanctions compels companies to come forward and request leniency. It all depends on the clear and unequivocal promise of amnesty to the first company that comes forward[13].

In this regard, the interplay between "monetary sanctions/leniency" naturally occurs, as the severity of the sanctions makes the possibility of exemption through cartel denunciation more attractive.

In this context, emphasis should be placed on the ongoing cooperation of the informing company during the investigation, which is essential for it to benefit from leniency. Additionally, strict confidentiality guarantees are provided to protect informants and their information.

Once all these preceding elements are brought together in a single procedure, the effectiveness of such a procedure can be claimed.

In summary, the procedure applicable to the examination of a leniency request can be schematically divided into three stages: the approach of competition authorities, the review of the request, and the adoption of the leniency opinion.

As for the second point, which rather concerns the history of this procedure: Clearly, the successive leniency programs at the European level demonstrate a growing search for effectiveness.

Similarly, in the case of French law, and following the substantive rules, the implementation rules for the leniency procedure were first established by law and subsequently clarified through the decisional practice of the competition authority and the leniency program specified in the 2006 procedural notice, revised in 2009 and recently in 2015.

Furthermore, in an ongoing pursuit of effectiveness in such a procedure according to the needs of a healthy French market, the French legislator adopted the "Macron Law"[14] on August 6, 2016, which aims to promote economic growth, activity, and equal opportunities. This law further simplifies the leniency procedure by allowing a company that denounces its participation in a cartel to the competition authority to benefit from total or partial exemption from the incurred sanction, without the need for a prior report, solely based on the hearing of the government commissioner and the company involved[15].

Finally, we can still conclude on the reasons behind the non-introduction and/or non-inclusion of this procedure in Algerian law, despite its crucial importance in dismantling cartels. Simply put, such a procedure logically emerges through the evolving practice in response to the surrounding circumstances.

However, this is not the case at all for the Algerian Competition Council, which remained inactive and stagnant for over a decade, still striving to establish itself as an effective independent authority.

Furthermore, we can also highlight the uniqueness of the Algerian negotiated procedure regarding the possibility of judicial recourse or judicial review of the Competition Council's decisions.

A beneficial decision for offenders within a negotiated procedure still falls under the concept of punishment rather than regulation, as there is no quasi-judicial process specific to this negotiated procedure before the Competition Council. This stands in contrast to the negotiated procedures before European and French competition authorities (the Commission and the French Competition Authority), which do involve quasi-judicial processes.

Indeed, in this context, there is nothing preventing the company involved from filing a judicial appeal, even if it has received a moderate sanction from the Competition Council. This is because there is no autonomous, restricted, and above all, flawless regulation by the Council, as Algerian law does not establish any specific quasi-judicial process for dealing with anti-competitive practices within any negotiated procedure.

However, within the same context, the aforementioned judicial control poses a real problem for practitioners of Algerian law, as it still demonstrates inconsistency. The judicial control of the Competition Council's decisions regarding anti-competitive practices falls exclusively under the jurisdiction of the Commercial Chamber of the Algiers Court of Justice, in accordance with the provisions of the amended and supplemented Ordinance 03-03, specifically in Article 63.

Besides, it is evident that under Algerian law, the Competition Council represents a national public institution, and Organic Law No. 98-01 of May 30, 1998, concerning the powers, organization, and functioning of the Council of State, in Article 9, exclusively assigns the control of regulatory or individual decisions emanating from national public institutions to the Council of State, as the highest administrative court.

From the outset, the Algerian legislator completely disregarded the principle of the hierarchy of legal norms by stipulating the provisions of Article 63 of the amended and supplemented Ordinance 03-03 concerning competition. In fact, the Algerian constitution requires that an organic law, being of a higher rank in the hierarchy of norms, can only be amended by another subsequent organic law of the same rank. The fact that Article 63 of Ordinance No. 03-03, dated July 19, 2003, was modified by an ordinary law No. 08-12 on June 25, 2008, thereby removing an exclusive prerogative and competence assigned to the Council of State by Article 9 of a previous organic law No. 98-01 of May 30, 1998, renders this Algerian ordinance concerning competition unconstitutional in the adoption of its Article 63.

Undoubtedly, we believe that the Algerian competition law should be amended to ensure compliance with the constitution.

In this regard, it should be noted that under Algerian law, only organic laws are subject to prior scrutiny by the Constitutional Council for compliance with the constitution. This explains the non-compliant nature of this ordinance.

Despite this glaring negligence, it should be remembered that it is still possible to subject this ordinance to subsequent review[16]. However, in this case, one must first have the legal standing

and, above all, the willingness to appeal to the Constitutional Council. Until then, the Algerian competition ordinance remains non-compliant with the constitution as long as it still adopts the provisions of Article 63.

1.2. In terms of voluntary commitments: The exclusion of an independent procedure

Voluntary commitments refer to the obligations undertaken by a company before an authority to put an end to proceedings against it for suspected violations of competition rules.

Indeed, when a competition problem arises, the competition authority may decide - instead of initiating a lengthy and costly procedure - to abandon proceedings against the company in question in exchange for the company's commitment to take specific measures to restore competition.

Article 9 of Regulation No. 1/2003 established the technique of voluntary commitments in EU competition law. In French law, the procedure was introduced by the ordinance of November 4, 2005, supplemented by Decree No. 2005/1668 of December 27, 2005, which added a new provision to Article 464-2 I of the French Commercial Code. This was followed by a communication from the Competition Council on April 8, 2008, regarding the procedure, which was replaced by another communication on the procedure dated March 2, 2009, taking into account the institutional reform brought about by the LME (Law on Modernization of the Economy)[17].

This procedure leads companies to commit to cease the harm caused to the economy and, to the extent possible, restore the competitive situation to its previous state (ex-ante).

As for Algerian law, it should be noted that the Algerian legislator, through its single provision (Article 60 of the amended and supplemented Ordinance 03-03), did not adopt this procedure. The commitments mentioned in the provision remain related to another negotiated procedure, constituting a mere condition within that procedure, albeit a mandatory one.

Thus, by fulfilling certain conditions, including the commitment to no longer commit violations under Algerian competition law, total or partial exemption can be granted to the offender by the Competition Council.

Indeed, the legislator states that exemption is granted to "companies that, during the investigation of the case concerning them, acknowledge the offenses attributed to them, collaborate in expediting the investigation, and commit to no longer commit offenses...". Therefore, the use of the conjunction "and" implies that the Algerian legislator does not consider these commitments taken alone as an independent procedure.

In this regard, these commitments cannot, in any case, independently constitute a procedure specific to Algerian law.

Regarding these concurrent commitments, they undoubtedly serve as supporting elements for a different negotiated procedure.

This is precisely why we believe that the Algerian legislator has set aside this procedure.

It should be noted that such commitments, even when used as support, lack guidelines issued by the Algerian legislator.

Indeed, the absence of regulatory texts related to the Algerian legislative provisions, as well as the lack of practice by the Algerian Competition Council in this regard, particularly after being inactive for over a decade, have undoubtedly contributed to the opacity of the negotiated procedure adopted by Algerian law.

2. In the context of a potential partial exemption

In this context, the company involved in an anticompetitive practice cooperates with the administrative procedure conducted before the competition authority in exchange for a reduction in the sanction.

For this purpose, the company may, depending on the case, either not contest the allegations or facts against it, or admit its responsibility.

The objective is not to detect or provide evidence of new anticompetitive practices but to reduce the costs of investigating a case.

Several competition authorities have settlement procedures. In this regard, it should be noted that there are two types of settlements: the French settlement (or non-contestation of the allegations) (2.1) and the community settlement (2.2), and one does not exclude the other.

2.1. In terms of non-contestation of allegations: The specificity of the Algerian procedure

From the outset, its origin is French. It was the NRE law[18] that introduced this procedure, which is now codified in Article L.464-2 III of the French Commercial Code.

The procedure was revised with the adoption of the ordinance on November 13, 2008, and since then, the commitments related to non-contestation of allegations have become optional.

The communication of February 10, 2012, addressed the previous practice and the conditions of application.

However, the non-contestation of allegations procedure, now known as the settlement procedure since the "Macron Law" of August 6, 2015, remains a French specificity[19].

As the name suggests, if the company or organization does not contest the allegations notified to it during the investigation phase before the competition authority, it signifies a waiver of contesting the allegations in the contentious phase. This procedure primarily takes place after the allegations have been sent. In such cases, the authority, taking into account this initiative, may reduce the amount of the incurred fine.

Furthermore, if the company commits to modifying its behavior in the future, the authority will consider this separate initiative and may further reduce the amount of the sanction.

It is clear that the Algerian legislator, through its single provision - Article 60 of the amended and supplemented Ordinance 03-03 - makes reference to the non-contestation of allegations procedure (i.e., the French settlement), by listing the specific conditions, particularly by stipulating the contentious phase[20].

Nevertheless, it should be noted that initially, the entire procedure relies on the recognition by the parties concerned of the infractions they are accused of, followed by their collaboration with the competition authority to demonstrate and/or prove their good faith, in addition to undertaking concurrent commitments to refrain from committing such infractions in the future.

Therefore, it can be acknowledged that the Algerian legislator has incorporated the French procedure of non-contestation of allegations, including the period prior to the entry into force of the ordinance on November 13, 2008, strictly speaking, as the commitments related to non-contestation of allegations were mandatory and not optional.

This supposition is based, in particular, on the chronology of the two procedures, Algerian and French: the Algerian legislator established a negotiated procedure through the amended and supplemented Ordinance 03-03 dated July 19, 2003, while its French counterpart adopted its procedure on May 15, 2001, through the NRE law, which gives uniqueness to the French procedure.

However, the Algerian legislative text remains opaque due to the absence of other regulatory texts related to its application, and the suspension of the exercise of the competition authority for over a decade - from 2003 to 2013 - only confirmed this opacity. This opacity extends to the form of this recognition, as it remains undefined, as well as to the process of this entire alternative procedure, which is still unknown.

Besides, the Algerian legislative text clearly emphasizes the recognition by the parties involved, which still leaves the door open for the adoption of the community transaction procedure (which we will study later), as the French non-contestation of allegations does not require the recognition of infractions by the companies involved, and this "recognition" is only implicit in this procedure.

Therefore, we can conclude that the Algerian legislator combines the two procedures into one.

This brings us back to the initial point regarding the opacity of Article 60 of the amended and supplemented Ordinance 03-03: in the absence of regulatory texts clarifying the application of its provisions, as well as the lack of effective exercise by the competition authority.

Furthermore, the absence of case law from the Court of Appeals in Algiers on this matter, while in France, in addition to the aforementioned, a public consultation is conducted to gather input from practitioners and/or academics to move forward with the implementation of such procedures.

On the other hand, the Algerian text is certainly more attractive than the French text in terms of the reward for companies that choose this procedure, as the Algerian procedure can lead to total immunity, whereas the French procedure only provides for a maximum reduction of 25% in the presence of concurrent commitments.

However, it is still necessary to clarify the concept of the Algerian procedure by focusing on the provisions of the Algerian legislative text. It primarily involves a reduction in fines that can lead to total exemption in the presence of a set of specific elements or factors, namely the recognition of the infringement, cooperation in expediting the procedure during the investigation, and the commitment to refrain from committing further infractions. Therefore, it is clear that these elements must be met in order to benefit from, or even claim, exemption (total or partial) as a reward.

On one hand, the accumulation of these elements is required, but on the other hand, the text does not explicitly refer to a procedure other than the normal or ordinary procedure. While the reward is indeed mentioned in the presence of the aforementioned elements, this reward remains a decision within the competence of the competition authority. It is a decision that follows the normal procedure, just like other decisions imposing sanctions against defendants contesting the allegations.

Indeed, Article 62 bis 1 of the Competition Act clearly states that "the sanctions provided for in Articles 56 to 62 of this Ordinance shall be imposed by the competition authority based on criteria relating, in particular, to the seriousness of the incriminated practice, the harm caused to the economy, the cumulative profits of the defendants, the level of cooperation of the implicated companies with the competition authority during the investigation, and the significance of the market position of the company under investigation." This confirms our observation regarding the indifference of the competition authority and the Algerian legislator regarding the process of administrative or public action at the authority, whether it involves defendants contesting the allegations or not. This is because total or partial exemption from the sanction, obtained after recognition of guilt and cooperation, follows the same ordinary decision-making process that imposes a penalty without reduction, as stipulated in Articles 56, 57, and subsequent articles of the amended and supplemented Ordinance 03-03.

2.2. In terms of settlement: An ambiguous procedure

Inspired by the non-contestation of allegations or the French settlement procedure, the settlement procedure introduced by the European Commission dates back to the publication of a draft communication on this matter, aiming at adopting decisions under Articles 7 and 27 of Council Regulation No 1/2003[21] in cartel cases.

The formal introduction of the settlement procedure was through the regulation of June 30, 2008[22], followed by the communication of July 2, 2008[23], which provided a detailed description of the applicable procedure.

The settlement procedure is considered as an admission and is initiated at the request of the company before any formal notification of allegations, within the same context as a leniency procedure.

Indeed, the request entails an absolute recognition of the infringement by the concerned company, as well as the main relevant facts, including their legal qualification and the duration of their participation in the infringement.

The Algerian legislator, through its sole article, namely Article 60 of the Competition Act, clearly stipulates that if the companies involved "recognize the infringements alleged against them, cooperate in expediting the procedure, and commit to refrain from committing further infringements," they will be rewarded either by a reduction in the amount of the fine or by a total exemption from it.

Right from the start, we are almost led back to the settlement procedure in its European version, as apart from cooperation and commitments made by the infringers, the provisions of this article entail the recognition of the infringements.

However, we cannot divert from the qualification of this recognition: it is indeed an admission of guilt.

This reflects a certain adoption of the European settlement procedure.

Nevertheless, it is important to highlight some differences in the implementation of the procedure, as the Algerian legislator - unlike its European counterpart - addresses the stage of the

investigation, even the contentious stage, whereas the European settlement procedure manifests in the pre-contentious stage, as the proposal in the latter occurs before the communication of allegations.

Furthermore, the scope of application of this European procedure is limited to cartels, whereas under Algerian law, there is no specific designation, leaving the door wide open to all infringements that harm competition.

Besides, the requirement of concomitant commitments further differentiates the Algerian procedure.

However, the reward under Algerian law can extend to total exoneration, whereas under European law, it is limited to a reduction. Additionally, the European procedure mainly applies to cartels, while under Algerian law, it encompasses all types of infringements that violate competition rules.

In this regard, the evident perplexity surrounding the adoption of the settlement procedure by Algerian law arises due to the opacity of the aforementioned Article 60.

Therefore, it is essential to provide detailed explanations of the provisions of this article through regulatory means, especially in the absence of the functioning of the Algerian competition authority.

However, the enumeration of commonalities and differences between the two procedures, namely European and Algerian law, clearly moderates any presumed notion regarding the adoption of a proper settlement procedure in Algerian law.

CONCLUSION.

Through this study, an attempt was made to shed light on the concept of negotiation in Algerian competition law. It was necessary to examine and demonstrate the corresponding procedure.

Indeed, the opacity of the provisions of Article 60 of Ordinance 03-03, as amended and supplemented, which remains the only text alluding to a supposed Algerian negotiated procedure, the lack of legislative texts in this regard, the decade-long freeze of the Algerian competition authority, the almost absence of decisions from the competition authority regarding anticompetitive practices, and the absence of relevant jurisprudence... all of these factors have only confirmed the acknowledged scarcity of the Algerian competition authority's practice.

Moreover, in this context, it is needless to mention that effective sanctions must first exist in order to negotiate them if necessary. Until today, the Algerian competition authority has not engaged in any negotiated procedures to resolve its few anticompetitive disputes.

However, for the purposes of this study, it was necessary to gather and assemble some elements - in accordance with the provisions of the sole Algerian text - that could constitute a negotiated procedure in the sense of the French settlement procedure, specifically the former French non-contestation of grievances procedure with mandatory concomitant commitments.

Although the Algerian "negotiated" procedure appears to be more attractive than the French procedure in terms of rewards, especially as it can lead to total exoneration, we have identified fundamental gaps in analyzing the said procedure, particularly in terms of addressing anticompetitive practices and the noticeable deficit in the extent and number of applicable regulations.

The adoption of such a procedure remains within the framework of the traditionally assigned repression by the competition authority, and it does not represent an appealing form of regulation on the part of the Algerian authority, as long as there is no specific decision-making process for dealing with an anticompetitive dispute within such a so-called negotiated procedure.

Until then, the treatment through a negotiated procedure at the Algerian competition authority follows the same ordinary and classical procedure, resulting more or less in repression.

This is the reason why this Algerian procedure escapes the drawbacks of the European and French procedures, not only by depriving recidivist offenders of any leniency but also by ensuring the guarantees of a fair trial before the Algerian authority and the non-marginalization of judicial control.

However, this is not due to the benevolence of the Algerian legislature, but rather to the absence of legislation in this regard, which superficially benefits companies that violate competition law.
Therefore, in order to assess the practice of the Algerian competition authority in this matter, it is necessary first to introduce genuine negotiated procedures as alternatives to sanctions, by legislating laws and issuing communications that facilitate this integration to meet the needs of a healthy competitive sphere. No one can claim the effectiveness of any so-called negotiated procedure in Algerian territory without practice.
In conclusion, it is essential to first uncover these negotiated procedures in order to establish their relevance.

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[7] *The Fourth Commission Notice on immunity from fines and reduction of fines in cartel cases, JOCE C. 256 of August 5, 201X.*
[8] *Ordinance 03-03, as amended and supplemented.*
[9] *Article 60 of the amended and supplemented Ordinance 03-03 clearly states that the investigation is already initiated by the competition council and makes no reference to the prior leniency request made by the reporting company or to the leniency notice issued by the competition council: "the competition council may decide to reduce the amount of the fine or not to impose a fine on companies that, during the investigation of the case concerning them, admit the offenses they are accused of, collaborate in expediting it, and commit not to commit any further offenses related to the application of the provisions of this ordinance..."*
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[12] *Article 3, point (C), of the amended and supplemented Ordinance 03-03 related to competition: "For the purposes of this ordinance, it is understood that... C) Dominant position: the position allowing a company to hold, in the relevant market, a position of economic power that gives it the ability to obstruct the maintenance of effective competition, by providing it with the opportunity for independent behavior to a considerable extent vis-à-vis its competitors, customers, or suppliers."*
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[16] In this sense, the Algerian Constitution of 1996, JORADP No. 76 of December 8, 1996, amended by Law No. 02-03 of April 10, 2002, JORADP No. 25 of April 14, 2002, Law No. 08-19 of November 15, 2008, JORADP No. 63 of November 16, 2008, and Law No. 16-01 of March 6, 2016, JORADP No. 14 of March 7, 2016, particularly Article 188 stating: "The Constitutional Council may be seized of a constitutionality exception on referral from the Supreme Court or the Council of State, when one of the parties in the case argues before a court that the legislative provision on which the outcome of the dispute depends infringes the rights and freedoms guaranteed by the Constitution. The conditions and modalities of implementation of the above paragraph are determined by an organic law." Similarly, in the new constitution of 2020, which states that "the constitutional court may be seized of a constitutionality exception on referral from the supreme court or the council of state, when one of the parties in the dispute argues before a court that the legislative or regulatory provision on which the outcome of the dispute depends infringes upon their rights and freedoms as guaranteed by the constitution. When the constitutional court is seized under the above paragraph, its decision shall be rendered within four (4) months following the date of its referral. This period may be extended only once for a maximum of four (4) months, upon a reasoned decision of the court, notified to the referring court."

[17] This is Law No. 2008-776 of August 4, 2008, on the Modernization of the Economy.

[18] This is the law on New Economic Regulations, published in the Official Journal on May 15, 2001, and more commonly referred to as the NRE law. Its goal is to reduce the negative effects of internal dysfunctions and globalization. Based on the requirement for transparency of information, this law stipulates that French listed companies must present in the annual management report, alongside their accounting and financial information, data on the environmental and social consequences of their activities. The NRE law came into force through a decree dated February 20, 2002, and has applied since January 1, 2003, for financial years starting from January 1, 2002.

[19] See B. Lassere, "Non-contestation of Charges in French Competition Law: Assessment and Prospects of a Pioneering Tool," Concurrences Review No. 2-2008, Article No. 17870, pp. 93-100.

[20] Article 60 of the amended and supplemented Ordinance 03-03 stipulates "...during the investigation of the case concerning them..."

[21] Regulation (EC) No 1/2003 of the Council of December 16, 2002, on the implementation of the rules of competition laid down in Articles 81 and 82 of the Treaty. Official Journal of the European Union (JOUE) L1 of January 4, 2003.

[22] Commission Regulation (EC) No 622/2008 of June 30, 2008, amending Regulation (EC) No 733/2004 as regards the procedures for transactions carried out in cartel cases. JOUE L173/3 of July 1, 2008.

[23] *Commission Communication of July 2, 2008, on the procedures for transactions carried out with a view to the adoption of decisions under Articles 7 and 23 of Regulation (EC) No 1/2003 of the Council in cartel cases. JOUE C 167/1 of July 2, 2008.*