The Limits of the Competition Council's Oversight of Public Procurement Contracts in Algeria

Ghania Abes*
Badji Mokhtar University – Annaba (Algeria)
Ghaniaabes2018@gmail.com
Naima Cheloufi
Mohamed Lamine Debaghine University – Sétif 2 (Algeria)
nessmacheloufi@gmail.com

Received: 05/02/2026 Accepted: 15/09/2026 Published: 06/10/2026

Abstract
The intervention of the Competition Council in public procurement contracts is essential for ensuring the application of competition rules, given its role as a regulatory authority responsible for enforcing the provisions of competition law. This is achieved through the oversight powers it exercises in the field of public procurement, a competence granted to it following the extension of the application of competition law to this type of contract. However, the Algerian legislator has imposed limits on the Competition Council's oversight in the field of public procurement, whether by restricting it to the tendering stage or in terms of the nature of anti-competitive practices subject to its oversight. Accordingly, this study aims to shed light on the limits established by the Algerian legislator on the Competition Council's oversight and to determine the extent to which these limits affect the effectiveness of its role as a competition regulatory body in the field of public procurement.
Keywords: Competition Council; public procurement contracts; anti-competitive practices; tendering.

Introduction

Competition is one of the most effective mechanisms for stimulating economic activity, developing the market, and increasing resources. However, anti-competitive conduct frequently occurs in ways that unlawfully exclude many competitors from the market. Therefore, the need arises for a specialized body responsible for regulating the market and combating anti-competitive practices. This body is represented by the Competition Council.With the enactment of Law No.

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08-12 [1] amending and supplementing Ordinance No. 03-03 [2] on competition in Algeria, the relationship between competition law and public procurement contracts underwent a significant development. Article 02 of this law provides for the application of the provisions of this competition-related ordinance to public procurement contracts from the announcement of the tender until the final award of the contract [3] ,thereby allowing the Competition Council to intervene, in accordance with the forms and procedures prescribed by law, to regulate competitive activity in the field of public procurement. The latter frequently provides an environment conducive to anti-competitive practices, prompting the Competition Council to exercise its oversight, which, based on an examination of the aforementioned law, appears to be limited in terms of its scope and distinctive in terms of its means. This is the subject that we shall examine and analyze in this article.

The significance of this study lies in determining the scope of the Competition Council's intervention between the requirements of market regulation, on the one hand, and the specific nature of the prerogatives of public authority, which are clearly manifested in public procurement contracts, on the other hand. It also seeks to eliminate ambiguity and resolve the overlap between administrative and judicial oversight and the oversight exercised by the Competition Council.

As for the objective pursued by this study, it is to shed light on the subject by analyzing the relevant legal provisions, assessing their effectiveness, identifying gaps and shortcomings, and proposing solutions. It is also useful to draw upon comparative legislation, while doctrinal analyses and scholarly opinions also constitute an integral part of this study. All of this aims to produce a comprehensive study that addresses all aspects of the subject.

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[1] Law No. 08-12, dated 21 Jumada al-Thani 1429 AH, corresponding to June 25, 2008, amending and supplementing Ordinance No. 03-03 on competition, Official Gazette of the People's Democratic Republic of Algeria, No. 36, dated 28 Jumada al-Thani 1424 AH, corresponding to July 19, 2003.

[2] Ordinance No. 03-03, dated 19 Jumada al-Awwal 1424 AH, corresponding to July 19, 2003, on competition, Official Gazette of the People's Democratic Republic of Algeria, No. 43, dated 20 Jumada al-Awwal 1424 AH, corresponding to July 20, 2003, as amended and supplemented.

[3] After the Algerian legislator had previously refused to apply the provisions of competition law to public procurement contracts, Article 02 of Ordinance No. 03-03, as amended in 2008 and 2010, was worded as follows: "Notwithstanding any other contrary provisions, the provisions of this Ordinance shall apply to the following:

- Production activities, including agricultural activities and livestock farming; distribution activities, including those carried out by importers of goods for resale in their original condition, livestock agents and brokers, and wholesale meat sellers; service activities, handicrafts, and fisheries; as well as activities carried out by public legal entities, associations, and professional organizations, regardless of their legal status, form, or purpose;
- Public procurement contracts, from the publication of the tender notice until the final award of the contract.

However, the application of these provisions must not impede the performance of public service missions or the exercise of the powers of public authority."

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Based on the foregoing, the research problem can be formulated as follows:

To what extent has the legislator succeeded in defining the limits of the Competition Council's jurisdiction in a manner that ensures the curbing of anti-competitive practices without compromising the specific nature of public procurement contracts?

To achieve the intended objectives of the study and answer the research problem raised, through a clear scientific legal study, we will primarily adopt the descriptive approach by investigating the subject of the study, collecting, classifying, and organizing the relevant information. We will also employ the analytical approach by identifying and analyzing the legal provisions under study, highlighting their strengths and weaknesses, and proposing solutions that we consider beneficial.

In order to comprehensively address the details of this study and the research problem raised within the framework of the objectives previously established, the study will be divided into two main sections. The first main section will be devoted to defining the jurisdiction of the Competition Council at the tendering stage, while the second main section will address the jurisdiction of the Competition Council in terms of the nature of anti-competitive practices.

First: Limiting the Competition Council's Jurisdiction to the Tendering Stage

Fair competition requires the absence of unrestricted freedom in the method used to conclude public procurement contracts. Restricting the freedom to choose the procedure for concluding a public procurement contract is based on distinguishing between the general rule and the exception. Thus, the tendering procedure, with its complex procedures that uphold the principle of competition, has been established as the general rule for concluding public procurement contracts, whereas the negotiated procedure, as a method for awarding the contract to a single contracting party without a formal call for competition, constitutes an exception that may only be resorted to in specifically prescribed cases[4]

Pursuant to Article 02 of Ordinance No. 03-03, the provisions thereof apply to public procurement contracts from the publication of the tender notice—currently referred to as the tendering procedure—until the final award of the contract. This means that the aforementioned article limits the temporal scope of the Competition Council's oversight to the contract-award stage, excluding the execution stage, and to the tendering procedure, excluding the negotiated procedure.

1- Temporal Scope of the Competition Council's Oversight of Public Procurement Contracts:

Article 02 of Ordinance No. 03-03 defines the temporal scope within which the Competition Council has jurisdiction over public procurement matters, namely the contract-award stage, excluding the execution stage. Some researchers have argued that this condition relates to the field

[4] Article 40 of Law No. 23-12, dated 18 Muharram 1445 AH, corresponding to August 5, 2023, establishing the general rules relating to public procurement contracts, Official Gazette, No. 51, dated 19 Muharram 1445 AH, corresponding to August 6, 2023.

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of competition, which exists only at the contract-award stage; once the contract has been awarded, this competition ceases, and the successful contracting party proceeds with its execution [5].

It is true that competition is at its peak during the contract-award stage of public procurement, making it more vulnerable to anti-competitive practices. However, this does not preclude the existence of competition during the execution stage of a public procurement contract. For instance, an amendment (*avenant*), which may be resorted to during the execution stage when new needs arise[6] , is often stripped of its nature as a legitimate mechanism through which the contracting authorities address unforeseen and incidental obstacles arising during the execution stage, and has increasingly been exploited to engage in practices that undermine competition in public procurement contracts.

Furthermore, subcontracting takes place during the execution stage of a public procurement contract. Despite the advantages of subcontracting, as well as the conditions governing competition in subcontracting[7] , the latter may nevertheless provide a means for dominant operators in the public procurement market to engage in anti-competitive practices.

In addition, it is noted that competition law has narrowly defined the contract-award stage, limiting it from the publication of the tender notice until the final award, thereby disregarding the stage preceding the invitation to contract. By this, we refer to the stage of determining the contracting authority's needs and preparing the specifications, both of which have a direct impact on the extent of competition, whether by restricting or expanding it. This raises the question as to why the Algerian legislator has overlooked these two stages, which are directly related to the principle of competition in public procurement, particularly in light of Law No. 23-12's emphasis on adopting non-discriminatory criteria in the selection of the contracting party, as well as on not directing specifications, when determining needs, toward a specific product or economic operator[8] . This confirms that this stage may be susceptible to anti-competitive practices requiring the intervention of the Competition Council. Indeed, the latter has confirmed that among the practices that raise suspicion in public procurement is the preparation of specifications that serve the interests of certain enterprises at the expense of others[9].

2- Competition Council's Oversight of the Tendering Procedure, Excluding Negotiation:

[5] Rahmani, Radia. "The Scope of the Competition Council's Jurisdiction to Examine Anti-Competitive Practices in Public Procurement." *Annals of the University of Algiers 1*, No. 02, Vol. 29, 2016, p. 250.

[6] Article 16 of Law No. 23-12.

[7] Article 82 of Law No. 23-12.

[8] Article 16 of Law No. 23-12 and Article 75 of Presidential Decree No. 15-247, dated 02 Dhu al-Hijjah 1436 AH, corresponding to September 16, 2015, on the regulation of public procurement contracts and public service concessions, Official Gazette, No. 50, dated 06 Dhu al-Hijjah 1436 AH, corresponding to September 20, 2015 (partially repealed).

[9] Competition Council, *Indicators of Collusion in Public Procurement*, Official Competition Bulletin, No. 9, Algeria, 2016, p. 13, available at the website www.conseil-concurrence.dz, August 28, 2025, 21:02.

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Pursuant to Article 02 of Ordinance No. 03-03, public procurement contracts concluded through the negotiated procedure were excluded from the scope of application of competition law and, consequently, were not subject to the oversight of the Competition Council, as though the legislator had categorically determined that competition was absent from both forms of negotiation, namely direct negotiation and negotiation after consultation.

Direct negotiation is based on the idea of negotiating with a particular economic operator to the exclusion of others. This demonstrates that the principle of competition is excluded when this form of negotiation is resorted to, since the contracting authority selects the contracting party directly after negotiating with it. It is therefore free in making this choice, meaning that there is no form of competition under this particular method of concluding public procurement contracts[10].

Unlike direct negotiation, where competition is absent, negotiation after consultation contains, albeit relatively, a certain degree of competition. This can be inferred from the fact that the Algerian legislator has surrounded it with a set of procedures. Although these procedures are not as complex as those governing the tendering procedure, they ensure a balance between the specific nature of negotiation after consultation and the provision of a competitive environment that serves this nature. These procedures include the preparation of specifications, consultation as a form of invitation to competition, in addition to publicity where appropriate. Moreover, negotiation under this procedure takes place within the framework of respecting the principle of competition, as previously explained.

In light of the existence of competition, even if only to a relative extent, under the negotiation after consultation procedure, the possibility of undermining it remains. Therefore, it cannot be categorically asserted that anti-competitive practices do not exist in negotiation as an exceptional method of concluding public procurement contracts. It would have been preferable to include negotiation after consultation in Article 02 of Ordinance No. 03-03 alongside the tendering procedure, particularly given that the poor reputation of the negotiated procedure has become widespread.

Second: Jurisdiction of the Competition Council in Terms of the Nature of Anti-Competitive Practices

Despite the soundness of the justifications relating to the extension of the application of competition law to the field of public procurement and the subjection of public procurement contracts to the oversight of the Competition Council, this does not negate the issues that this may generate, relating mainly to the nature of the public procurement contract and the acts undertaken in connection with it. In order for the Competition Council's jurisdiction to be established, these contracts must be connected to economic activity, in addition to the practices falling within their

[10] Abdel Hamid El-Shawarbi, *Administrative Contracts in Light of Jurisprudence, Case Law, and Legislation*, Maaref Establishment, Alexandria, Egypt, 2003, p. 91.

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scope not being connected to the performance of public service missions and the exercise of public authority.

1- Connection of the Public Procurement Contract with Economic Activity

In line with the economic dimension of the market, which is manifested through its reliance on the mechanisms of supply and demand for a particular product or service, the Algerian legislator has adopted, with regard to the legal protection of this entity, a substantive criterion consisting in extending the provisions of competition law to all economic activities, including production, distribution, and services, regardless of the nature of the person carrying out this activity, whether a natural or legal person, public or private[11] .With reference to Article 03 of Ordinance No. 03-03 on competition, we find that it defines the undertaking subject to its provisions as "any natural or legal person, regardless of its nature, that permanently carries out distribution, service, or import activities."

If public procurement contracts, in themselves, are contracts based on the agreement and concurrence of the wills of their two parties, whereby an agreement is reached to establish and create reciprocal obligations[12] , their subject matter is not far removed from competition law, as it constitutes an economic activity.

Furthermore, with reference to Article 24 of Law No. 23-12, we find that it defines the subject matter of public procurement contracts as the execution of works, acquisition of supplies, completion of studies, and provision of services. These are activities that do not differ from the production, distribution, and service activities subject to competition law.

In addition, it is noted that the aforementioned decree contains numerous terms related to the economic aspect, including the criterion of the best offer in terms of economic advantages and the consideration of the economic advantages provided by the allotment process[13]

In addition to the above, public procurement contracts are linked to economic operators, as provided for in Article 02 of Law No. 23-12, which states that "public procurement contracts are written contracts concluded for consideration by the public purchaser with one or more economic operators, referred to as the contracting operator…," which means that public procurement contracts have a direct impact on economic activity.

As for the position of the Algerian Competition Council, it issued a decision dated 17/10/1999, i.e., under repealed Law No. 95-06 on competition, rejecting jurisdiction in the field of public procurement contracts. It affirmed the substantive criterion for subjecting any activity to competition law, considering that the decision to award a public procurement contract taken by the

[11] Ilham Bouhleis, "Small and Medium-Sized Enterprises within Competition Law: A Preferential Status with a Dual Impact," *Journal of Humanities*, Brothers Mentouri University, Constantine, No. 46, December 2016, p. 92.

[12] Souheila Dibache, "The Issue of Applying Competition Law to Public Procurement Contracts," *Sixth National Conference on the Role of Public Procurement Law in Protecting Public Funds*, Faculty of Law, Dr. Yahia Fares University, Médéa, May 20, 2013, p. 09.

[13] Article 53 of Law No. 23-12.

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contracting authority is an administrative decision that is not subject to the oversight and jurisdiction of the Competition Council, since the jurisdiction of the latter is determined by the nature of the practices committed, which must be carried out in the course of distribution, production, and service activities[14]

It follows from the foregoing that the Competition Council may intervene, in accordance with the forms prescribed by law, in order to regulate economic activity in the field of public procurement, since the public person acts as an economic agent without exercising acts of public authority. The applicability of public procurement contracts to the oversight of the Competition Council is therefore determined by the capacity of the contracting authority. While the Competition Council's oversight of practices committed by competitors does not raise any issue, directing the same oversight toward contracting authorities raises several issues, which we shall explain below.

2- The Intervention of the Competition Council Must Not Impede the Performance of Public Service Missions or the Exercise of Public Authority

The intervention of the Competition Council in the field of public procurement, given that it has become a body responsible for overseeing it, is not unrestricted. In addition to limiting the scope of its intervention to the tendering procedure, from its announcement until the final award, Ordinance No. 03-03 on competition law, specifically in the final paragraph of Article 02 thereof, emphasizes that the application of its substantive and procedural provisions must not impede the performance of public service missions or the exercise of public authority.

2.1. Practices Falling Outside the Jurisdiction of the Competition Council in Public Procurement

The decisions taken by the contracting authority in the course of performing its administrative activities fall outside the jurisdiction of the Competition Council, namely those relating to public service missions and the exercise of prerogatives of public authority. This was confirmed by the Algerian Competition Council in its decision issued on October 17, 1999, under the aforementioned repealed Ordinance No. 95-06 on competition. In that decision, the Council ruled that it had no jurisdiction to examine the case brought before it, because the matter in question concerned the choice made by a public authority of an enterprise to carry out public works, and the public authority intervened on this basis in its capacity as a demander in the market for the execution of construction works. This means that awarding a contract to an enterprise does not constitute an act of production, distribution, or services.

It follows from the foregoing that the Competition Council refused to examine decisions taken by a public entity aimed at managing the public service and exercising public authority, as such decisions constitute administrative activities, and the public entity intervenes in its capacity as a demander for the execution of construction works rather than as a supplier thereof. This removes

[14] Mohamed Cherif Ketou, "Protection of Competition in Public Procurement Contracts," *Algerian Journal of Legal, Political and Economic Sciences*, Faculty of Law, University of Algiers, No. 02, 2010, p. 92.

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such entity from the scope of the Council's jurisdiction, which oversees only practices committed by economic agents in the course of carrying out their economic activities, regardless of their status, whether belonging to the private or public sector[15]

The position of the Algerian Competition Council referred to above was consistent with that of its French counterpart, which likewise held that it lacked jurisdiction over administrative decisions taken by public-law persons and involving prerogatives of public authority for the purpose of managing public services[16]

The French Council of State likewise, in one of its decisions, sought to establish limits on the full application of the principle of free competition, holding that requiring highly specialized technical qualifications for the award of a public procurement contract could restrict competition among the candidates. However, it permitted such conduct, justifying it on the grounds that it was required by the needs of the public service[17] Despite the amendment of Ordinance No. 03-03, such that Article 02 thereof expressly provides for the application of its provisions in the field of public procurement, and Article 06 thereof prohibits the award of a public procurement contract to those engaging in anti-competitive practices, the Algerian Competition Council remained committed to and maintained its position. In a relatively recent decision of the Algerian Competition Council, issued on 02/05/2016 in a dispute between the single-member limited liability company HKM23 and the Bab El Oued Municipality, the company, which operates in the fields of industrial printing, advertising, publishing, and distribution, notified the Competition Council of the municipality's violation and failure to respect the fundamental principles of the efficiency of public procurement provided for in Article 05 of Law No. 23-12, namely, failure to respect the principle of competition.

[15] Ibid., pp. 90–91.

[16] See:

- Competition Council, Decision No. 05-D-23 of May 18, 2005, concerning the referral submitted by France Incendie, "France Incendie requests the annulment of certain invitations to tender organized by public entities (public hospitals, regional council), on the grounds that the drafting of certain specifications for particular administrative and technical clauses restricts competition. However, it is settled case law that the assessment of the manner in which public entities organize their invitations to tender does not fall within the jurisdiction of the Competition Council, but rather within that of the administrative courts…"
- Decision of the Competition Authority of April 15, 2010, No. 10-D-13, concerning practices implemented in the container handling sector at the Port of Le Havre. Available on the website www.autoritedelaconcurrence.fr, accessed on 22/09/2025 at 22:58.

[17] French Council of State, Section, November 3, 1995, No. 152484: "…the competent authority establishes specifications exceeding the standards in force; however, if such specifications have the effect of reducing the variety of products that comply with them and, consequently, limiting competition among potential suppliers, they must be justified by the specific requirements of the public service for the supply of drinking water; by finding that the technical specifications established by Article 2-4 of the specifications for particular technical clauses are not indispensable for compliance with the standards in force relating to the quality of drinking water, the challenged order did not disregard the right of the competent authority to adopt specifications exceeding those standards and is, consequently, not vitiated by an error of law on this point…" Available on the website www.legifrance.gouv.fr, accessed on 22/09/2020 at 18:10.

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The complainant company was unable to prepare its bids, and the deadline set for submitting bids was very short, namely 10 days. The company also accused the municipality of planning, throughout all stages of the procurement contract, to award the contract to a particular company.
The Competition Council rendered its decision, holding that the referral was rejected on the merits for lack of jurisdiction, on the grounds that the subject matter of the case fell within the jurisdiction of the administrative courts. The facts referred to, even though they concerned a public procurement contract, did not fall within the jurisdiction of the Competition Council, as they did not constitute practices or acts prohibited by Articles 6, 7, 10, 11, and 12 of the Competition Law[18]
The Competition Council's justification for its lack of jurisdiction, as set out above, is inconsistent with the Competition Law, as Article 06 thereof prohibits any practice, concerted action, agreement, or express or tacit arrangement when its purpose is to obstruct or restrict freedom of competition, particularly through the contracting authorities' allowing the contract to be awarded to those engaging in anti-competitive practices. We also agree with the view that the Competition Council should not have based its decision on the ground that the facts did not concern practices restricting competition, because such a finding would require it first to rule that it had jurisdiction as to form, and then to rule on the merits by dismissing the claim for lack of grounds[19] . This is because rejecting a claim on formal grounds entails not addressing, even superficially, the subject matter of the dispute. In another decision of the Algerian Competition Council dated January 16, 2018, the Copper and Tin Utensils Company "ECFERAL" alleged that the National Tobacco and Matches Company "SNTA" had engaged in anti-competitive practices, as it had not awarded the contract relating to boilers to the claimant company and had instead chosen to award it to an international company, despite the latter possessing all the technical and financial requirements. In addition, it alleged a violation of Article 85 of Presidential Decree No. 15-247 for failure to

[18] Competition Council Decision No. 2016/02, dated 02/05/2016, Case: Single-Member Limited Liability Company "HKIM23" v. the El Oued Municipality, cited by: Nadia Thiab and Hania Ahmid, "Application of Competition Law to Public Procurement Contracts – Between Legal Provisions and Practical Issues," Journal of Legal and Political Sciences, Faculty of Law and Political Sciences, University of Shahid Hamma Lakhdar, El Oued, No. 01, April 2021, p. 607.
In another decision of the Algerian Competition Council, it was notified by the limited liability company "MID" concerning an error relating to a violation of public procurement rules by depriving it of first place in the national tender despite having satisfied the conditions relating to price and quality, and awarding the contract to the company ranked seventh. The Council held that the referral was inadmissible for lack of jurisdiction, on the grounds that the facts alleged did not fall within its powers. Competition Council Decision No. 16/2015, dated November 13, 2014, Case No. 26/2003, "MID" Company v. the National Institute of Land and Irrigation and Drainage, Official Competition Council Bulletin, No. 8, 2015, p. 46 et seq., available on the website http://www.conseil-concurrence.dz, accessed on 27/09/2025 at 01:38.
[19] Farid Abbas, "Commentary on Competition Council Decision No. 02-2016 dated 02/05/2015, Case: Single-Member Limited Liability Company 'HKIM23' v. the El Oued Municipality," National Conference on Rationalizing Public Expenditure and the Challenges of Advancing the National Economy through the Regulation of Public Procurement Contracts, Faculty of Law, Boudouaou, University of M'Hamed Bougara, Boumerdès, November 20–21, 2017, pp. 5–6.

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respect the preference accorded to the national product. The claimant even requested the annulment of the tender, but subsequently withdrew the claim.

The Competition Council did not reject the claim on formal grounds for lack of jurisdiction; on the contrary, it held that the claim was admissible as it satisfied the formal requirements, and ruled on the merits that the claim was inadmissible because the claimant had withdrawn it, in addition to finding that competition had not been affected. This latter statement indicates that the Council examined the substance of the referral[20] In addition, we observed a contradiction in the approaches adopted by the Competition Council between its decisions and its opinions. On June 29, 2016, the Council issued Opinion No. 2016/02, based on a request submitted by the insurance company "Alliance Assurances," through which it requested the Competition Council to give its opinion on anti-competitive practices committed against it by the company "Cosider," following the latter's announcement of a restricted national tender for insurance coverage and its inclusion of a condition requiring companies to have a minimum share capital of four (04) billion dinars. The insurance company "Alliance Assurances" considered this condition to constitute a preliminary means of excluding private insurance companies, since among the six (06) national insurance companies meeting the required conditions, only one is a private company. The Competition Council did not reject the request on the merits; rather, it expressed its opinion on the basis of the provisions of Article 06 of the Competition Law, considering that the restricted national tender was compliant with the Public Procurement Law, and that the minimum share capital requirement of four (04) billion dinars did not constitute a barrier to entry into the insurance market [21] .

The foregoing leads us to question the scope of application of Article 02, paragraph 02, and Article 06, paragraph 07, of the Competition Law. Answering this question will clarify the criterion distinguishing between the jurisdiction of the Competition Council and that of the administrative judge in disputes concerning infringements of competition in the conclusion of public procurement contracts, which we shall address below.

2.2. Practices Falling within the Jurisdiction of the Competition Council in Public Procurement Contracts

Practices that, by their nature, fall outside decisions of public authority may be challenged by referring the matter to the Competition Council. Such practices may be separated from decisions of public authority either because they were issued by competing undertakings, or because they were issued by the contracting authority responsible for the project without taking into consideration the resulting infringement of competition, thereby depriving them of the immunity they enjoy as decisions issued by public authority. Consequently, the Competition Council

[20] Competition Council Decision No. 01/2018, dated January 16, 2018, Copper and Tin Utensils Company "ECFERAL" v. National Tobacco and Matches Company "SNTA," Official Competition Bulletin, No. 16, p. 06 et seq., available on the website http://www.conseil-concurrence.dz, accessed on 29/09/2025 at 22:24.

[21] Competition Council Opinion No. 02-2016, dated 29/06/2016, concerning the request submitted by the insurance company "Alliance Assurances" regarding an anti-competitive practice committed by the company "Cosider," available on the website http://www.conseil-concurrence.dz, accessed on 26/09/2025 at 01:37.

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intervenes in such practices[22] As for practices arising from competing undertakings, whether natural or legal persons and whether governed by private or public law, they raise no particular issue, since jurisdiction to hear disputes concerning them lies with the Competition Council, given that their participation in obtaining the public procurement contract and the acts they undertake constitute an economic activity.

As for practices arising from the contracting authorities responsible for the project, they must be separable from decisions of public authority. This concerns acts that are subject to competition law despite being carried out pursuant to the provisions governing public procurement contracts, as they are considered economic activities[23] . The economic nature of these acts is determined on the basis of the ultimate use of the works, supplies, and services covered by the contract. If these purchases are subsequently resold to consumers for commercial purposes, competition law becomes applicable, and the Competition Council has jurisdiction to adjudicate disputes relating to the decisions and practices of the project owner after they have ceased to benefit from the prerogative of public authority, due to the commercial purpose accompanying them. Accordingly, the French competition authorities have relied, in determining their jurisdiction and applying competition law, on whether the public purchaser acted as a final economic demander or as an intermediary demander, with competition law applying to the latter[24].

Nevertheless, the boundaries separating administrative activity in public procurement contracts from anti-competitive practices remain very delicate, making it difficult to distinguish between them. The current system for the distribution of jurisdiction between the administrative courts and the Competition Council under Algerian legislation is unconvincing, given the difficulty of determining whether oversight of an anti-competitive practice can be separated from the review of the legality of administrative acts[25] , particularly where acts are of a dual nature: on the one hand,

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[22] Mohamed Cherif Ketou, "Protection of Competition in Public Procurement Contracts," op. cit., p. 92.

[23] The French Competition Authority held, in a decision issued on 22/04/2009, that the act of the professional organization of pharmacists of sending a letter to nursing homes and healthcare institutions urging them to contact pharmacies located closest to them in order to purchase medicines, despite their competitive prices, was liable to restrict access to the market and the exercise of competition. When the organization argued that the Competition Authority lacked jurisdiction and that jurisdiction lay with the administrative courts, on the grounds that it was entrusted with performing public service missions and vested with prerogatives of public authority, the Authority nevertheless considered that the letter sent by the organization constituted a clear intervention in a service activity, thereby establishing its jurisdiction to hear the case. See:
The Competition Authority, Decision No. 09-D-17 of April 22, 2009, concerning practices implemented by the Regional Council of the Order of Pharmacists of Basse-Normandie. Available on the website www.autoritedelaconcurrence.fr, accessed on 27/09/2025 at 04:34.

[24] For further details, see: Mohamed Cherif Ketou, op. cit., p. 93 et seq.

[25] Badra Laour, *Mechanisms for Combating Commercial Practices Offences under Algerian Legislation*, Doctoral Dissertation submitted for the award of a Doctorate in Legal Sciences, Specialization in Business Law, Faculty of Law and Political Sciences, Department of Law, Mohamed Khider University, Biskra, 2013/2014, p. 499.

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they fall within the powers of public authority, while on the other hand, they constitute an anti-competitive practice. The best example of this is the procedure for the provisional or final award of the contract. The latter constitutes an administrative decision, as previously explained, and may also constitute a prohibited practice as referred to in Article 06 of Ordinance No. 03-03 on competition. Herein lies the issue concerning the competent authority: the Competition Council or the administrative judge? This necessitates establishing a decisive criterion in order to prevent any evasion of the oversight of the Competition Council, which is primarily the body competent to protect competition and impose penalties on those who restrict or undermine it.

Conclusion

At the conclusion of our study, we can state that the Competition Council's oversight of public procurement contracts constitutes a safeguard for consolidating the principles of transparency and equality and combating anti-competitive practices in the field of public procurement contracts. However, it faces a number of legal restrictions and limitations that reduce its effectiveness, as the Council's interventions often remain subsequent and consultative. Moreover, some of the Council's decisions do not possess the necessary deterrent enforceive force to deter violators of competition rules in public procurement contracts. The following are some recommendations that we consider beneficial:

- Work toward including administrative judges in the composition of the Competition Council, thereby enabling greater convergence between the foundations of legal reasoning and legal treatment, and ensuring the proper application of legal provisions. On the other hand, this may be considered as training for administrative judges in matters related to competition.
- Expand the temporal and substantive scope of the Competition Council's intervention so that its oversight extends to all stages of concluding public procurement contracts, whether concluded through the tendering procedure or negotiation after consultation.
- Make consultation with the Competition Council mandatory, whether concerning regulatory texts or draft laws, particularly those relating to public procurement contracts as well as public service delegation contracts.
- Expand the scope of persons entitled to refer matters to the Competition Council to include all bodies provided for under the Public Procurement Law.
- Establish clear channels of communication and coordination between the Competition Council and other oversight bodies, whether administrative or judicial.

Footnotes

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