

REGULATION OF BANKING ACTIVITIES BY THE COMPETITION COUNCIL

Sennour Fatima Al-Zahra ¹

¹Professor Lecturer A, Djillali Liabes University of Sidi Bel Abbes, Faculty of Law and Political Science 19 March 1962, Specialization: Private Law - Business Law (Algeria).

The E-mail Author: sennour.droit@gmail.com

Received: 08/2023

Published: 03/2024

Abstract:

The establishment of rules and principles of competition law, instead of the old legislation related to prices, indicates that jurisdiction over competition matters has not been left solely to judicial bodies. Instead, there has been a move towards the establishment of a specialised authority to deal with all competition-related issues, the "Competition Council". The Competition Council is an independent administrative authority with legal personality and financial independence.

The Competition Council is charged with combating restrictive and anticompetitive practices, as well as economic consolidations. However, the role of the Competition Council in the banking sector is not clearly defined, as the banking sector is subject to its own specific regulations and strict supervision by specialised bodies.

Keywords: Competition Council, restrictive practices, banking competition, economic sectors, banking sector, bank mergers.

Introduction:

As part of the transition from a centrally planned economy to a free market economy in the late 1980s, it became necessary for Algeria to adopt and legislate the principles of a free market economy. This led to the adoption of legal texts in line with this new direction. The starting point was the recognition of one of the fundamental principles of capitalism, namely the principle of free competition. Subsequently, a law was enacted to protect and promote competition, and the responsibility for ensuring compliance with its provisions was assigned to a specialised institution known as the "Competition Council".

Considering that competition is a fundamental aspect of any economic activity, the scope of application of the Competition Act and, consequently, the jurisdiction of the Competition Council were broad. They covered all sectors of economic activity, including production, distribution and services. Therefore, the development of competition law and the Competition Council was not isolated from developments in other sectors of economic activity, each with its own set of regulations. Simultaneously with the enactment of the Competition Act and the establishment of the Competition Council, sector-specific regulators were introduced to regulate specific economic activities.

Sector-specific regulators have broad and important powers in their respective fields, including disciplinary, arbitration and regulatory (rule-making) powers. As a result, the role of the Competition Council in regulating certain sectors of the economy has become less distinct, as these sectors are subject to specific laws and supervision by specialised bodies. An example of such sectors is the banking sector, which is highly regulated by laws issued by the Central Bank and subject to strict supervision by the Banking Committee. Given its sensitivity, any disruption in the

banking sector can have serious consequences, affecting not only the interests of the bank but also those of its customers and potentially damaging the financial reputation of the state.

Given the broad and important powers of banking supervisors within their jurisdictions, the following questions arise To what extent is competition in the banking sector subject to the oversight of the Competition Council?

In order to answer this question, we have divided the topic into two axes. The first axis will deal with banking competition in Algeria, where we will explain the concept of banking competition in general, followed by the current state of banking competition in Algeria as an object of study. The second axis will examine the extent to which competition in the banking sector is subject to the supervision of the Competition Council. This will be done by highlighting the interventions of the CCC in the regulation of different sectors of economic activity, with the aim of identifying the obstacles to the submission of banking activities to the supervision of the CCC.

First axis: banking competition in Algeria

Like many countries, Algeria abandoned socialism as an economic system based on central planning and collective ownership of the means of production. Instead, it adopted capitalism as an economic system based on private ownership and market freedom. This change has led to a new and different reality for banking competition in Algeria compared to the past.

First, the concept of competition in banking:

The term "competition" in Arabic refers to the desire for something and the desire to possess it. In systemic, socialist and capitalist contexts, this concept is associated with the desire for excellence in business activities that benefit both the competitor and the consumer at the same time. Given the close link between competition and economic activity, it has become indispensable in the professional sphere.

Among the definitions of competition, we find Adam Smith's definition as a dynamic process or behaviour dictated by economic rivalry. The term "rivalry" here refers to the presence of several institutions operating in the same sector and offering similar or alternative products. Each institution seeks to outperform the others in order to capture or dominate the market.

On the other hand, competitiveness is defined as "the skill, technique or superior resource that enables an organisation to create value and benefits for customers that exceed those offered by competitors, or that confirms its distinctiveness and differentiation from those competitors from the perspective of customers, who accept this difference and distinctiveness because it provides them with more value and benefits than those offered by competitors". From this definition, it is clear that the extent to which an institution is able to compete with others and maintain its competitiveness is primarily linked to the technologies and means at its disposal to ensure its differentiation from other institutions.

On the basis of what has been presented, banking competition can be defined as the plurality and diversity of components within the banking system, which leads each bank to try to differentiate itself from other banks in terms of the products and services it offers, enabling it to acquire the largest market share that will ensure its continuity, expansion of its activities and maximisation of its profits.

If the bank's objective in competing with other banks is to acquire the largest market share by attracting the largest number of customers, the tools and techniques it uses to achieve this are numerous and varied. The bank may resort to improving the quality of the products it offers its

customers, providing better quality services than other banks, or offering attractive interest rates. In addition, the reception and treatment of customers are considered to be tools of banking competition.

Second, the reality of banking competition in Algeria.

Global banking and economic developments have had a significant impact on banking competition worldwide, and these developments have also had a clear impact on banking competition in Algeria, especially after the country decided to open its markets and legislate on capitalist principles.

At the global level, the banking sector has witnessed many developments and innovations that have intensified banking competition. The most important of these developments are:

1. Globalisation and liberalisation of trade in financial services: Financial services are among the key areas affected by economic globalisation. The emergence of financial globalisation resulted from the liberalisation of trade in services. This liberalisation, agreed and signed in the General Agreement on Trade in Services (GATS), extended the application of international trade rules beyond goods to financial services. It led to increased competition among banks globally and locally, and smaller banks lost their ability to continue due to their weak competitiveness.

2. Bank mergers: The phenomenon of creating huge banking entities through bank mergers is one of the most important features of contemporary global banking. It emerged to cope with financial globalisation and increased competition at the global level. Bank mergers are seen as one of the solutions adopted to avoid the negative effects of bank failure or bankruptcy. Bank mergers generally involve the merger of two or more banks into one, where the merged bank ceases to exist and its assets and liabilities are added to the assets and liabilities of the acquiring bank. Such mergers can take place between small and large banks, or between large banks themselves. The phenomenon of bank mergers increases the ability of the merged banks to compete globally.

3. Modernisation and innovation in the banking sector: One of the significant changes that the financial sector, especially the banking sector, witnessed in the late 1980s is the emergence of development, modernisation and innovation in the banking industry. Moreover, financial innovations were not limited to financial derivatives and credit derivatives, but extended to the way traditional banking services are provided. This is a result of banks using technological advances to develop their services and increase their competitiveness. Among the most important financial innovations in banking are automated teller machines, credit cards, electronic clearing between banks and electronic fund transfers.

In Algeria, several developments in the banking sector have contributed to increased competition among banks subject to Algerian law. These developments are generally the result of the economic openness that Algeria experienced in the late 1980s. The main developments and changes that have contributed to increased competition among Algerian banks include:

1. Abolition of the state monopoly on economic activity: Prior to the enactment of Law 90-10 on banking and credit, there was no room to talk about competition among banks. All Algerian banks were public and their role was limited to implementing state development plans and financing foreign trade on behalf of the state. This was due to the state's monopoly on economic activity, including domestic and foreign trade. However, with the enactment of Law No. 90-10, followed by Decree No. 03-11 on Banking and Credit, banking activities were opened up to private individuals in parallel with the abolition of the state monopoly on economic activity. This led to a congestion of the banking market and increased competition between banks.

2. Abolition of specialisation and adoption of the universal banking concept: In addition to the fact that all Algerian banks were public before the repeal of Law 90-10, they were also subject to the principle of specialisation, which made competition between them almost non-existent. Although the 1971 Finance Law abolished the concept of bank specialisation, it gave the Treasury broad powers to direct credit and finance planned investments. The interest rates and commissions payable to banks for lending operations were set by the Minister of Finance. Currently, there is no concept of bank specialisation and the Algerian legislature has adopted the concept of comprehensive banking. The activities of banks are no longer limited to the financing of certain sectors of the economy or to banking operations alone, but extend to various other operations such as contributions, the provision of advice, financial management, financial engineering and other diverse financial services.

3. Diversity of the components of the banking system: The Algerian banking system has witnessed a diversity in its components due to the opening up of banking activities to private individuals. After public banks dominated the banking sector, new types of banks have emerged with different capabilities, resources and services. In addition to public banks, private domestic and foreign banks, Islamic banks and electronic banks have been established. Each bank strives to expand its activities, maximise profits and gain the largest market share.

The second axis: The extent to which banking activities are subject to the supervision of the Competition Council.

Banking activities are among the activities listed in article 02 of decree 2103-03, which refers to the amended and supplemented competition regulations. Accordingly, they are initially subject to the supervision of the Competition Council. However, taking into account the provisions of the Banking and Credit Law and the relevant regulations, we note the existence of several legal obstacles that prevent the Competition Council from intervening to regulate banking activities. In order to clarify these obstacles and their implications, it is necessary to explain the forms of intervention of the Competition Council in the regulation of various sectors of economic activity, including the banking sector.

First, the forms of intervention of the Competition Council in the regulation of economic sectors:

The Competition Council is an independent administrative authority with broad powers to ensure fair competition. It is empowered to intervene in various sectors of economic activity to combat restrictive practices and economic concentrations. In order to fulfil this role, the Competition Council has been given considerable powers, which are reflected in its interventions in various sectors of economic activity. These interventions can be broadly categorised into two main types: prior intervention and subsequent intervention.

Prior intervention of the Competition Council:

The Competition Council's prior intervention in the regulation of economic sectors is manifested through its advisory powers, which serve as a form of prior control. The Competition Council gives its opinion on any matter relating to competition at the request of the Government. It may also be consulted by local communities, economic and financial bodies, institutions, professional associations, trade unions and consumer protection associations. In addition, judicial authorities may seek the opinion of the Competition Council when dealing with cases related to restrictive

practices. In addition, the Competition Council has the right to propose any competition-related initiative.

It should be noted that the advice provided by the Competition Council is not binding, either in terms of the Council's initiative to provide it or in terms of the Government's decision to consult it. However, the Competition Council must be consulted on all legislative and regulatory projects related to competition. In addition, it must be consulted when measures are taken to subject a profession, activity or market to quantitative restrictions, to impose exclusive fees in certain regions or activities, to impose special conditions on the practice of production, distribution and services, or to establish uniform practices regarding sales conditions

2- Subsequent intervention by the Competition Council: Subsequent intervention by the Competition Council is exercised through its dispute resolution and enforcement powers. Although the Council does not have jurisdiction over claims for damages resulting from restrictive practices or the annulment of agreements and contracts concluded between economic entities (as these fall under the jurisdiction of the judiciary), it has extensive dispute resolution and enforcement powers granted by the legislator. The Competition Council has the power to examine cases within its jurisdiction, either on its own initiative, at the request of the Minister of Trade, or at the request of local authorities, professional associations, trade unions or consumer protection associations. In addition, the Competition Council has the power to carry out investigations or expert opinions on matters within its competence, or to request such investigations from the competent economic investigation authorities. In addition to the above powers, the Competition Council has the power to impose fines on institutions found to have engaged in anticompetitive practices and to impose warning fines on institutions that fail to comply with orders and interim measures issued by the Council.

Second: Obstacles to the subordination of banking competition to the supervision of the Competition Council.

Distortions and infringements of competition have always been more evident in the banking sector than in any other sector of the economy. The public authorities have not always been committed to promoting competition in the banking sector. If we examine the various legal texts regulating banking activities and the related provisions, we find several legal obstacles that prevent the Competition Council from intervening in the regulation of banking activities. The main obstacles are the following

1- Restrictions on the application of competition law to banking activities: Banking activities as a whole constitute what is known as banking business. Looking at banking activities in terms of their classification and the conditions imposed on banks by Algerian legislation, it can be seen that the legislator distinguishes between two types of activities: banking activities and activities related to the banking profession.

Banking operations are defined and listed in Article 66 of Decree No. 03-11, which refers to the amended and supplementary monetary and credit regulations. Articles 67, 68 and 69 of the same decree specify the respective operations, which include the receipt of money from the public, the granting of credit and the provision and management of means of payment to the public. The normal practice of all banking operations is considered the reserved domain of banks, as opposed to other financial institutions. Non-bank financial institutions may normally carry out only one of these operations, namely the granting of credit.

The activities related to the banking profession are defined in articles 72, 74 and 75 of the amended and supplemented Decree 03-11.

These operations include activities related to banking, contributions and other operations. Unlike banking operations, banks and financial institutions cannot normally carry out these operations. The legislator has imposed a number of conditions on the exercise of these operations, as set out in Decree 03-11, including:

- These operations may not exceed the limits set by the Monetary and Credit Council.
- These operations, regardless of their importance, must be limited in relation to the bank's overall activities. It should be noted that neither the Monetary and Credit Council, nor Decree 11/03, nor the implementing texts have specified the standard for assessing the importance of these operations in relation to the Bank's overall activities.
- These activities must not prevent, restrict or distort competition, as stated in Article 34, a condition that the legislator did not impose on the practice of banking operations.

The above conditions indicate the limited application of competition law to banking activities. This is due to the fact that normal banking activities are the exclusive preserve of banks and financial institutions. However, non-bank institutions also carry out banking-related activities which are not subject to the monopoly principle, as they may not have the same financial and material resources as banks. In order to protect these institutions, the legislator requires banks not to interfere with or restrict competition when carrying out these activities.

2- Banking activities are subject to special regulation and strict supervision: The implementation of Decree 11-03 on cash and credit, as well as the regulatory provisions issued pursuant to it, show that many forms of practices restricted by the concept of Decree 03-03 on competition are covered by the systems issued by the Central Bank and the Banking Commission in the banking sector. These restrictive practices do not fall under the principles of free competition and market forces, but rather under the supervision of the Central Bank and the Banking Committee and the regulations issued by the Central Bank.

As regards practices that restrict competition, many of these forms in the banking sector are not subject to the principles of free competition and the supervision of the Competition Council to the same extent as they are subject to the supervision of the Central Bank and the Banking Committee.

The latter has broad powers to regulate the activities of banks, including determining the conditions for the licensing of banks and their branches, as well as the conditions for the establishment of their networks and the conditions for the opening of representative offices of foreign banks. In addition to setting these conditions, it is also responsible for authorising the opening of banks, branches and representative offices and for amending their statutes. In addition, while banks are free to determine the interest rates they offer on deposits and charge on loans, interest rate ceilings are the responsibility of the Central Bank of Algeria under Article 09 of Decree No. 01-13, which lays down the general rules governing banks' conditions of operation. In addition, any introduction by banks of a new product in the banking market requires prior authorisation from the Central Bank of Algeria, as does the introduction of new means of payment.

As far as banking conglomerates are concerned, banks, as joint stock companies, are subject to the same rules on mergers of joint stock companies as are laid down in the Commercial Code. The law recognises the legality of mergers and demergers, as well as the acquisition of shares in other companies. However, with reference to Regulation 03-11 on cash and credit, it is clear that the

control of banking mergers, as an economic form, is surrounded by ambiguity, especially during the establishment phase. While the creation of any conglomerate aiming to achieve a market share of more than 40% of sales or purchases in a given market, or any conglomerate likely to affect competition, requires prior authorisation from the Competition Council, the creation of any bank subject to Algerian law also requires prior authorisation from the Central Bank of Algeria. The banking conglomerate formed by mergers must comply with the same conditions and procedures for establishment as individual banks.

Complexity is further increased by the fact that mergers of companies may take different forms under Algerian commercial law. Depending on the circumstances, mergers may take the form of absorption, merger or demerger.

3- The lack of precise regulation of the relationship between the Competition Council and the banking supervisory authorities is evident: It is clear that the banking sector is subject to relative compliance with competition rules, as many practices that are considered restrictive of competition are regulated by the laws issued by the Central Bank and the Monetary Authority, as well as by economic conglomerates.

However, this does not mean that banking competition is excluded from the jurisdiction of the Competition Council or that the Council does not exercise its powers in this area. In the absence of a precise legal framework governing the relationship between the Competition Council and the banking supervisory authorities, in particular the Central Bank and the Banking Commission, the Algerian legislator, unlike some comparative jurisdictions, has not established clear boundaries between the jurisdiction of the Competition Council and that of the banking supervisory authorities. This is one aspect of the problem. On the other hand, Law 03-11 on banking and credit, as well as the regulations issued by the Central Bank and the Monetary Authority, are not able to cover all forms of practices that may restrict or hinder competition in the banking sector.

In order to understand the nature of the relationship between the Competition Council and the banking supervisory authorities, it is necessary to refer to the legal texts that regulate the tasks and powers of these authorities, mainly the Competition Law, the Banking and Credit Law and their implementing regulations.

With regard to Law 03-03-03 on amended and supplemented competition, it contains provisions regulating the relationship between the Competition Council and other economic regulators in general. Article 39 of Law 03-03-03, as amended by Article 21 of Law 08-12, states: "If a case is brought before the Competition Council concerning practices in a sector under the supervision of a regulatory authority, the Competition Council shall send a copy of the file to the competent authority for its opinion. "When a case is brought before the Competition Council concerning practices in a sector under the supervision of a regulatory authority, the Competition Council shall send a copy of the file to the competent authority for its opinion. The Competition Council shall, within the framework of its duties, strengthen cooperation, consultation and exchange of information with the regulatory authorities". "The Competition Council may seek the assistance of any expert or hear any person able to provide information". Through these two articles, it is clear that the legislator recognised the need to regulate the relationship between the Competition Council and other regulatory authorities, but did not provide the necessary provisions for sectoral regulators to cooperate, exchange information and consult with the Competition Council.

As far as Law 03-11 on banking and credit is concerned, it does not contain any regulatory provisions on the relationship between the banking supervisory authorities and the Competition Council, and the same applies to the regulations issued by the Central Bank and the Monetary Agency.

Moreover, Law 03-11, as amended and supplemented, is largely devoid of legal provisions requiring banks to comply with competition rules, with the exception of Article 75(02), which states that the exercise of banking activities may not prevent, hinder or distort competition, and Article 129, which prohibits any transfer or remittance abroad that may lead to the creation of a situation characterised by monopoly, cartel or alliance in Algeria. In addition, Article 96 mentions the promotion of competition and the elimination of obstacles to the tasks of the Algerian Banking Association.

Conclusion

It can be said that banking is considered a fertile field for competition, similar to other economic activities, whether at the global or national level. Competition among Algerian banks has intensified since the end of the 1980s to the present day as a result of the abolition of the state monopoly on economic activity and the opening up of markets to private individuals and foreigners, as a result of the adoption of capitalism as an economic system as opposed to socialism.

This situation led the Algerian legislator to try to keep up with global economic and banking developments by creating the Competition Council to ensure fair competition, since competition is a fundamental principle in the banking sector, as in other sectors of the economy. However, the legal texts governing the powers of the Competition Council on the one hand, and the powers of the banking supervisory authorities on the other, have revealed their shortcomings in achieving functional integration between these authorities.

Protecting competition among Algerian banks and ensuring its smooth operation has become more than necessary, and this cannot be achieved without clarifying the extent to which banking activities are subject to competition law and establishing a legal framework that precisely regulates the relationship between the Competition Council as a general regulator and the banking regulators on the other hand.

Footnotes:

(1) The outlines of this trend appear in Law 88-01, which includes the Law on the Orientation of Public Economic Institutions (Official Gazette No. 02 of 1988), and subsequently several legal texts were issued dedicated to this principle until it was constitutionally enshrined in the 1996 Constitution (Official Gazette No. 76 of 1996).

(2) The first specific law on competition is Decree No. 95-06 of 25 January 1995 on competition, published in Official Gazette No. 16 of 18 April 1995 (repealed).

(3) The Competition Council was first established in Algeria by Decree No. 0695 on competition, without defining it or specifying its legal nature. With the promulgation of Decree 03-03 amending and supplementing the competition law, Article 23 provided for the creation of an administrative body called the "Competition Council" with legal personality and financial independence. This article was later amended by Law 08-12, which couched it in terms that left no doubt as to the legal nature of the Competition Council, stating: "An independent administrative authority, called the Competition Council, with legal personality and financial independence, is established under the responsibility of the Minister of Commerce".

- (4) Hassan Mohammed Mohammed Boudi, "Freedom of Commercial Competition and the Necessity of Protecting it from Monopolistic Practices: A Comparative Study", Dar Al-Kutub Al-Qanuniyya, Shatat Printing Press, Cairo, 2011, p. 7.
- (5) Adam Smith's definition quoted by Boukhelala Saham, "Banking Competition in Algeria in the Context of Economic Reforms after 1990: A Case Study of Commercial Banks" (Master's thesis), Faculty of Economics, Kasdi Merbah University, academic year 2006/2005, p. 28.
- (6) Mohammed Samir Ahmed Comprehensive Quality and Achieving Oversight in Commercial Banks, First Edition, Al Masirah Publishing, Distribution and Printing House Amman 2009, p. 139.
- (7) Ammar Bouzrar: Monetary Policy and Its Impact on Macroeconomic Variables - The Case of Algeria, First Edition, Dar Qurtuba for Publishing and Distribution, Algeria, 2015, p. 75.
- (8) Boukhelala Saham, *ibid*, p. 31.
- (9) Mohamed Ahmed Abdel Nabi, Banking Supervision, first edition, Zamzam Publishers and Distributors, Amman, 2010, p. 22.
- (10) This idea is based on merging entities that are unable to compete with other viable entities to form a new entity with greater competitive ability and to avoid the negative effects of resolving the distressed entity.
- Habal Adel, "The Problem of Non-Performing Bank Loans" (Introduction, submitted as part of the requirements for obtaining a Master's degree in Economic Sciences, specialisation in Economic Analysis), Faculty of Economic Sciences, Commercial Sciences and Management Sciences, University of Algiers 03, 2011, p. 101.
- (11) Bukhlala Saham, cited above, p. 32.
- (12) Mohammed Ahmed Abdel Nabi, see above, p. 31.
- (13) Law No. 90-10 of 14 April 1990 on monetary and credit matters, Official Journal No. 16 of 18 April 1990.
- (14) Law of 2003 on monetary and credit matters, as amended and supplemented, published in the Official Journal of the European Communities No. 52 of 27 August 2003.
- (15) The principle of specialisation refers to the fact that the Bank engages in a number of operations and finances certain sectors rather than others.
- (16) Mahfouz Labb: "A Summary of Algerian Banking Law", Council of University Publications, Algeria, 2004, pp. 35-36.
- (17) A universal bank is a bank whose activities are not limited to some banking operations, but can engage in all banking operations.
- Samir Jilda, Commercial Banks and Banking Marketing, 1st edition, Osama Publishing and Distribution House, Amman, 2009, p. 224.
- (18) Articles 72 to 75 of Decree No. 03-11 on Amended and Supplementary Money and Credit Matters.
- (19) The banking system refers to the totality of active banks in a country, which is part of the financial system that includes banks, financial institutions, monetary authorities and various entities responsible for ensuring the sound functioning of the banking system.
- Fadila Mallah, "Protecting the Algerian Banking System from Money Laundering (A Study based on Current Legislation and Legal Systems)", Dar Homa for Printing, Publishing and Distribution, Algeria, 2013, p. 24.

- (20) Al Baraka Bank is considered to be the first Islamic bank in Algeria. It was established on 6 December 1990, with 49% of its capital subscribed by Al Baraka International Bank and 51% by the Bank for Agriculture and Rural Development.
- (21) Order No. 03-03 of 19 July 2003 on modified and complementary competition, No. 43 of 20 July 2003.
- (22) Restrictive practices are defined in Article 14 of Order No. 03-03 on modified and complementary competition. These practices include acts, managerial actions and agreements that may hinder or restrict the freedom of competition, abuse of a dominant position, obstruction or unfair manipulation of the freedom of competition, arbitrary pricing or the application of arbitrarily low selling prices.
- (23) Adnan Fares: "The Functional Relationship between the Competition Council and Other Regulatory Authorities", National Conference on Independent Regulatory Authorities in the Economic and Financial Field, Faculty of Law and Economic Sciences, Abderahmane Mira University in Bejaia, 23-24 May 2007.
- (24) Articles 35, 36 and 38 of Decree No. 03-03 on modified and complementary competition.
- (25) Article 36 of Decree No. 03-03 on the modified and complementary competition.
- (26) Article 48 of Decree No. 03-03 on amended and complementary competition.
- (27) Article 44, Decree No. 03-03 on modified and complementary competition.
- (28) Articles 34 and 37, Decree No. 03-03 on modified and complementary competition.
- (29) Articles 56 to 62, order no. 03-03 related to modified and complementary competition.
- (30) GAVALD Christian, STOUFFLET Jean, Banking Law "Institutions-Accounts-Operations-Services", Lexis Nexis edition, Paris, 2010, p. 145.
- (31) The Algerian legislator has authorised certain non-banking institutions to carry out certain banking operations in order to achieve social and economic objectives, as provided for in Articles 77 to 97 of Decree No. 11/03 on amended and supplementary monetary and credit matters.
- (32) Articles 70 and 71 of Order No. 03-11 Related to Amended and Supplementary Monetary and Credit Matters.
- (33) The term "other operations" refers to what is provided for in the first paragraph of Article 75 of Decree 11/03 on amended and complementary monetary and credit matters. The legislator authorised banks and financial institutions to carry out operations other than banking operations and operations related to their activities, as well as contributions. It should be noted, however, that the legislator did not specify the nature and content of these operations.
- (34) Paragraph 02, Article 75, Decree No. 03-11 on Amended and Supplementary Money and Credit Matters.
- (35) Article 76 of Decree No. 03-11 on amended and complementary monetary and credit matters.
- (36) In Articles 6, 7, 10, 11 and 12 of Decree No. 11/03 on amended and complementary monetary and credit matters, the legislator has provided various examples of restrictive practices. These examples are illustrative rather than exhaustive, as each category of restrictive practices may include several subcategories that are difficult to enumerate in full.
- (37) Article 62, Decree No. 03-11 on amended and complementary monetary and credit matters.
- (38) Law No. 13-01 of 8 April 2013, which establishes the general rules on banking conditions applicable to banking operations.

(39) Decree No. 75-59 of 26 September 1975, which includes the amended and supplemented Commercial Code, Article 101.

(40) Articles 744 to 748 of Order No. 5975, which incorporates the Commercial Code, contain general provisions on company mergers. Articles 749 to 762 contain the conditions and procedures for mergers.

(41) Articles 17, 18 and 19, Order No. 03-03, relating to modified and complementary competition.

(42) Articles 82 and 94, Decree No. 03-11 related to amended and complementary monetary and credit matters.

(43) Ben Hamla, Sami, "The Concept of Corporate Mergers in Commercial Law", (Journal of Humanities Sciences), Issue 28, Mentouri University Constantine, December 2007, pp. 251-252.

(44) In this context, it is worth mentioning the French legislation which has given the Competition Council the power to examine restrictive practices, abuses and dominance in the banking sector, whether in relation to banking operations or operations related to the banking profession. Previously, this power had been given to the Banking Committee, while the supervision of banking conglomerates remained unclear.

- GAVALDA Christian - STOUFFLET Jean, op.cit., pp. 145-146.

(45) Adnan Fares: "The Functional Relationship between the Competition Council and Other Regulatory Authorities", National Conference on Independent Regulatory Authorities in the Economic and Financial Field, Faculty of Law and Economics, cited above.