

Surveillance Mechanisms on Economic Aggregations

آليات الرقابة على التجميعات الاقتصادية

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الملخص:

تتجه عادة المؤسسات إلى تعزيز وضعيتها وجودها في السوق باستعمال قوتها الاقتصادية وتجميعها في إطار ما يعرف بالتجميع الاقتصادي، واتخاذها هذا الشكل غير مخالف للقانون، لكن قد يخولها ذلك إلى محاولة التحكم في السوق، وهو الأمر الذي يستوجب مراقبتها قبل إنشاءها. وعليه تحتل آليات مراقبة التجميعات الاقتصادية مكانة هامة القانون الجزائري، كونها تخدم العديد من المصالح على رأسها مصلحة المنافسة الحرة و مصلحة المؤسسات المعنية بالتجميع، ذلك أن هذه الأخيرة تقوم بتجميع قوتها الاقتصادية من أجل السيطرة على السوق والتحكم فيه، الأمر الذي يؤدي بخلق سلطة تحل محل السلطات العمومية في السوق، لذلك استدعى الأمر الحصول على ترخيص قبل إنشاء أي تجميع اقتصادي، وفرض شروط على عملية التركيز لتفادي عرقلة المنافسة أو المساس بها. الكلمات المفتاحية: التجميع الاقتصادي- مجلس المنافسة- الآليات- المؤسسة- مراقبة.

Abstract:

Institution usually tend to enhance the position of their presence in the market using their economic power and gathering it into what is known as the economic gathering. So, taking this form is not against the law but this entitles them to try to dominate the market, and this is the matter that requires their surveillance before their foundation.

Accordingly, surveillance mechanisms of economic aggregations occupy an important position in Algerian law, as they serve many interests, the first of which is the interest of free

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competition and the interest of institutions that are concerned with aggregate, as the latter gather their economic power in order to control and dominate the market, the matter that leads to the creation of an authority that replaces the public authorities in the market, therefore, it was necessary to obtain an authorization before the foundation of any economic aggregate, and impose conditions on the concentration process to avoid impeding or prejudicing the completions.

key words: Economic aggregation - Competition council - Mechanisms - Institution – Surveillance.

introduction:

The Algeria has adopted the economic aggregations in the late eighties, where it paid attention to the competition during the period of economic reforms and adopting the so-called the free economic system by moving towards the economic openness policy ; the Price Law **89/12** included for the first time the term economic aggregation¹, that was upheld by both of the **1989** constitution and the **1996**² one later on, then the Competition Law by virtue of ordinance **n° 03-03**³ amended and supplemented by law **n° 12-08**, that is also amended and supplemented by law **n° 10-05** organizes economic aggregations in a full chapter which is entitled Economic Aggregations, then they are followed by a series of decrees and executive orders issued by the legislator, including the executive decree **n° 05- 219** on how to obtain licenses for the foundation of economic aggregations⁴.

The importance of the theme revolves around the surveillance mechanisms over the economic aggregations, and the supervisory procedures to which they are subject to avoid deviation from their legitimate path, besides to showing the role of the competition council in controlling and supervising the economic concentrations, and highlighting the points of overlap between its powers regarding the granting of licenses for the foundation of economic aggregations, and the government's powers to which the Algerian legislator has recognized the specialization to grant licenses if the public interest so necessitates, or applying a specific legislative or regulatory text.

¹ -Law n°89/12, dated 5 July 1989, on Prices, LGBL. n° 29.

² -Constitution of the people's Democratic Republic of Algeria of 1996.

³ -Ordinance n° 03-03, dated 19 July 2003, concerning competition, LGBL.n°43,amending and supplement by Law n° 08-12 of 25 June 2008,LGBL.n° 36, and Law n° 05-10 of 18 August 2010, LGBL. n° 46 of 2010.

⁴ -Executive Decree n° 219-05, dated 22 June 2005,LGBL.n° 43 of 2005.

The reasons of studying the theme are because of objective and subjective reasons, where the first are represented in the desire to discover the dimensions of the theme and know the mechanisms that establish the economic aggregations as well as the conditions for their subjection to surveillance, besides to the awareness of the regulatory nature through which any negative effects that may be caused by the economic entities inside the market are avoided, that would prejudice and restrict the competition, as the matter is not exclusive to the decisions that are issued by the competition council regarding granting licenses since they are not absolute, but also the government is involved in the intervention, including expressing opinion process on the part of the Minister charged of Commerce. However, the subjective reasons are due to the desire to deepen into the legal and economic issues that touch the theme, foremost among which are the themes that are related to the competition in order to enrich the intellectual skill.

Our study also aims to shed the light on the surveillance mechanisms that are decided upon the economic aggregations by the competition council, including conditions that achieve this, besides to clarifying the surveillance procedures on the economic aggregations that are preceding and following to their foundation, and the consequent effects, whether by accepting or rejecting their foundation, which will be the subject of a challenge in front of the state council later on. All this is done by presenting a legal study of a purposeful scientific nature. Accordingly, we have chosen an appropriate problematic for our theme in order to touch all the aspects that we have summarized in the following question: What are the most important mechanisms that establish the economic aggregations from the legal side? How did the Algerian legislator organize the supervisory aspect from the procedural side?

To examine this problematic which is mentioned in the research paper, we will adopt the descriptive analytical approach of the various legal texts that organize the phenomenon of the economic aggregations in terms of their concept and the mechanisms that are establishing them, besides to the procedural aspect which is related to the surveillance on the economic aggregation, and analyzing it in a legal way according to a such manner that enables us to infer ambiguity and points of overlap in this regard between the various sides. And a research proposal that is adopted is considered as a reflection of the desired target of the study, where we have dealt with :

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First axis : Defining the economic aggregation's concept

Second axis : Surveillance procedures on the economic aggregations

Section I: Defining the economic aggregation's concept

Economic aggregations are considered one of the solutions offered to many small and medium institutions that face difficulties in front of the giants of merchants in the market, because they have a strong position that qualifies them to stretch their influence in the market, therefore, the economic aggregations appear in granting these institutions abilities that qualify them to compete, and which take several forms, so they are at the same time mechanisms through which the economic aggregation processes are realized, and this is what we will discuss as follows :

A) Definition of economic aggregation

The nomenclature of economic aggregations has differed among many researchers, there are those who name it with the term of economic concentration, while others name it the economic aggregations, however the Algerian legislator has given it a special nomenclature, which is « the economic aggregations » from the perspective of the competition law and distinguished them from other comparable concepts.

And to deepen in giving a general and comprehensive definition of the economic aggregations, there are those who define them as a procedure that leads to the formation of a new economic entity or enjoyment of an economic entity for the benefit of another economic entity in whole or in part, which may harm the market structure by reducing the number of economic agents who are existing in the market for a service or goods which is a subject of competition .¹

As for an economic aggregation in science, it is a mass or gathering of two or more institutions in a specific legal formation, in order to bring about a constant change in the structure of the market², with all the aggregated institutions losing their independence for the sake of enhancing the economic power of their group. In this context, the scholar **Claude Champ** and defined it as the economic aggregations are a phenomenon that is characterized by growing the

¹ - Ministry of commerce : economic aggregations, from the directorate of commerce of the wilaya of Biskra, 2017, site : (23.06.2022) <https://dcwbiskra.dz>

² - Bedra Laouar, mechanisms of fighting crimes of commercial practices in the Algerian legislation. PhD theses, Mohamed Khider university. Biskra, 2014, p 130.

size of projects on one hand and reducing the number of projects that are operating in the market on the other hand¹.

Indicating to the Algerian legislation, you find that it did not mention a definition for the economic aggregations, but it just stipulated the forms and models of economic aggregation in the competition law, precisely in the article 15 of ordinance n°03-03 dated in July 19,2003, that is related to competition, by stipulating :

“ The aggregation is done according to the concept of this issue if :

- Two or more institutions are incorporated that were independent before.
- If a person or several natural people who have power over one institution at least, or one or several institutions obtained the surveillance of one or several institutions or part thereof, in direct or indirect manner via taking shares in the capital, buying elements of the institution’s assets, under contract or via any other means.
- A mutual institution is established that performs constantly all the functions of an independent economic institution.”²

It is openly clear from the content of the article that the economic aggregation means gathering two or more institutions according to a specific legal formalization for the purpose of making a lasting change in the structure of the market, with losing these institutions to their independence for the sake of promoting the economic strength ³, also the concentration and grouping the economic institutions helps to form huge economic units that push the wheeled of the economic development forward, whereas this phenomenon can be negative if it endeavors to dominate and control the economic activity due to the lasting change in the body and the structure of the market, and the independence vanishing of the economic agents or institutions in exchange for the strengthening the economic power of those who are gathered.

It is clear through the competition legislation that the economic aggregation comprises all the processes that would lead to the rise of the economic units size, as well as that aim to realize what is called

¹ - Claude .C, *The power of the joint stock institution’s concentration*. U. d. I. Ed. Paris, 1962, p130.

² - Ordinance n° 03-03, dated 19 July 2003, concerning competition, LGBL.n°43 of 2003.

³ - Rachid Ouadeh, *institution in the Algerian legislation between theory and practice*. Dar Houma. Algeria, 2003, p20.

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the economic integration among the mutual institutions in the concentration processes, in addition to that, exercising dominance and imposing surveillance by a single institution over a series of economic institutions is considered an economic aggregation of a grouping nature¹.

Economic aggregation differs from corporate pool, the later is a conglomerate of huge economic units according to which each company enjoys the legal independence and in which the mother company exercises its effective and legal influence over its dependent companies because of its ownership of the majority of the shares in them, while it is for the economic aggregations as a result of consolidation between the institutions², which the later lose their legal identity in favor of the company that is created by the consolidation.

However in the Algerian legislation, the legislator has dealt with the corporate pool in the article **796** of the legislative decree n : **93/08** which is dated on **April 25, 1993**, where it stated as follows : « Two or more legal persons are permitted to founder among themselves in writing and for a limited period an aggregation to apply all appropriate means for the sake of facilitating the economic activity of their members, or evolving it as well as improving and enhancing the results of this activity ».³

- Economic aggregation and the gathering : We mean by the gathering in the French law the legal structure that was created in response to projects that are of an economic nature and based on developing the cooperation relationships and economic conglomerate between them, and they rely in this case on the economic aggregation which take the shape of merger and participate in improving their capacities in order to transfer to the image of economic aggregation later on, as a consequence of their weak capacities⁴.

To sum up, the economic aggregations in their legal form are considered a contract between several institutions, according to which the property rights are transferred, benefit from the properties of the

¹ - Messaad Djalal, *the extent to which free competition is affected by the commercial practices*. PhD theses. Mouloud Mammeri university. Tizi Ouzou, 2012, p190.

² - Ahmed Orflei, *the mediator in commercial companies law*. El Attach complex for specialized book .Tunisia : Ed n :03, 2015,p 471.

³ - *Legislative Decree n° 93-08 of 25 April 1993,amending and supplementing ordinance n° 75-59 of 26 September 1975, containing the Commercial Code*.

⁴ - Bedra Laouar, *op.cit*, p 135.

instructions or part of them by the institutions that exercise their influence over the rest institutions.

B) The aggregation processes that are subject to surveillance

The phenomenon of aggregate institutions formation or the economic aggregation process is realized through the availability of one of the mechanisms that the Algerian legislator had stipulated and defined in the article **15** of the competition law¹, which is either the merger process, via the surveillance mechanism or the establishing mechanism which are considered at the same time forms of the economic aggregation that do not obtain approval except after the interpolation many stipulated conditions by law, and this is what we are going to deal with in the following:

- 1- The merger process:** the merger mechanism is considered an economic aggregation that the first paragraph of the article **15** of the competition law had stipulated, where it was mentioned that « Economic aggregation is done in the concept of this matter if; Two or more institutions that were independent before, have merged... ». Therefore, merger is considered one of the mechanisms for creating economic aggregations, however, concerning the merger definition, it defines as the process through which a company or many companies transfer their financial charge to another existing company or a company being founded. But, from The point view of the competition law, the Algerian legislator had relied on the institution's concept or the economic project in its definition of the merger, where it is considered as a merger according to the competition law, this process that contains conjunction and blend of the economic projects that were independent before², on the basis that the image of mixture, according to which many economic projects are establishing a new company, that merged projects disappear behind it, whereas in the conjunction process, a company or economic project will swallow another company which loses its incorporeal character. So, the aggregation via the merging method forms the outstanding face of economic concentration phenomenon , in the same manner of division adopted by both the French and

¹ - see: ordinance n° 03-3 on competition, amended and supplemented , op.cit.

² - Sami Ben Hamla, the competition law. Numidia for printing. publishing and distribution. Constantine, 2016, p114.

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Algerian legislators as one of the merger images, where the Algerian legislator stated in the second and third paragraphs of the article **744** of the ordinance **n°75-59** that contains the commercial law the both merger and division processes when it talked about the corporate merger as follows: « ... It also has the right to give its money to the existing companies or to participate with them in the foundation of new companies through the fusion or separation, and finally it may also provide its capital to new companies via separation »¹. But the merger through mixture, like what we have mentioned before, it represents the most precise image of the merger, as it requires the foundation of a new company with a new incorporeal character as a consequence of the vanishing of the mixed companies and the transfer of their assets and charges to the new company, indicating to this form of merger has difficult and complicated procedures as regards to the foundation of the new company compared to the method of conjunction in which many companies agree to join each other and transfer all rights and commitments to the connective company, with the latter keeping its incorporeal character, and raising its capital from the total treasury of the merged companies, and this merger is considered the easiest for the companies and less costly.

Among the legal consequences of the merger is that it is considered a legal process of a contractual nature and one of the reasons for changing the legal structure of the institution, besides to this, it is considered as an act that transfer property and imposes ending the incorporeal character of one or more institutions according to the forms it takes.

2- The surveillance process : The mechanism of possessing surveillance or influence in a company or any economic project is considered as the most important images of economic aggregation processes that have been resulted by the economic updates recently, where the second paragraph of the article **15** of the competition law had stipulated: « A person or many natural people who have influence over an institution at

¹ -Ordinance n° 75-59 of 26 September 1975, containing the Commercial Code establishes the special rules applicable to economic public institutions, amended and supplemented by Act n° 88-04 of 12 January 1988.

least, or an institution or several institutions obtained surveillance of an institution, many institutions or part of thereof, in a direct or indirect manner via taking shares on its capital, or by buying elements of the institution's assets, by contract or by any other means ». Therefore, we understand that the surveillance mechanism can be exercised by a natural or incorporeal person for the sake of establishing an economic aggregation and scaling it up¹. So that the process constitutes an economic aggregation, it must be proven the presence of what is called the decisive surveillance over an economic project's activity or a given company pool. without forgetting to indicate that the Algerian legislator did not include any definition of surveillance, as well as the article **16** of ordinance **03-03** had clarified the purpose of surveillance that it is the surveillance which results from the contract law or that gives by other methods, in individual or collective manner, depending on the circumstances, the possibility of exercising a certain and lasting influence over the institution's activity. It is worth to state that exercising surveillance and influence over one institution from another is done via all contractual and financial transactions that belong to commercial or civil law². And the means remain by which surveillance is exercised, which are numerous, for example in the second paragraph of the article **15** that we have mentioned before, through including the phrase of: « ...or by any other means », and this is due to the nature of the economic sector, that calls for flexibility in transactions.

- 3- The process of establishing a common institution:** In order to be in front of an economic aggregation, it is a must to establish a common institution that has the same functions of an independent economic institution, this is because the purpose of establishing the common institution is to gather the material and human means and improve its ability to compete in the markets, which makes it give the image of an economic aggregation when it appears in the market as a single

¹ - Ilhem Bouhalays, *specialization in the competition field. master's degree. college of law. Mentouri university, 2005, p34.*

² - Lina Hassen Dhaki, *competition and ban monopoly law. Dar of Arab renaissance. Cairo, 2006, p 248.*

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customer. Therefore, the Algerian legislator stipulated it within the provisions of economic aggregation in the third paragraph of the article **15** of the competition law: « If a common institution is established, it shall constantly perform all the functions of an independent economic institution ». A common institution is defined as a company or an economic project that results in an economic unity or a characteristic economic activity, nevertheless, it is subject to the surveillance in a common manner by two companies or its constituent companies, which are independent of each other¹. The establishing mechanism for the economic aggregation process is considered as a new mechanism that the legislator had added when issuing the order **03-03**, the amended and supplemented, and setting precise conditions concerning the issue of determining the concentration nature of the projects or the common institutions. It is a condition for the foundation of the economic project or the common institution, in cahoots with at least two people or two companies that enjoy independence from the mother company or from the economic projects managed by the latter so that the process forms an economic aggregation, besides to that, participation must be during the foundation and not after that, because the article **15** in its third paragraph spoke of surveillance at the time of foundation and that the common institution constantly performs all the functions of an independent institution, and this is meant here is independence just in activity and not a whole independence from the established institutions.

In summary, Economic aggregations are not submitted to surveillance unless conditions that are determined in the articles **17** and **18** of the competition law are available, that are represented in overtaking the economic aggregation process the legal limit, and leave negative effects on the rest of the institutions that cannot be overlooked, besides to that, aggregation process affects the competition as a consequence of owning an economic power that makes the process illegal and entails submission to the competition council surveillance.

So concerning the overtaking of the economic aggregation process the sill that is legally determined, we find that the

¹ - Sami Ben Hamla, *op.cit*, p 119.

competition council interferes by the surveillance procedures in the case of occurring aggregations that damage the competition by the institutions and their overtaking the legal limit of the economic aggregation process, because the ordinance **n: 03-03** that is related to the competition had stipulated in the article **18** a criterion according to which the aggregation processes that submit to the surveillance domain of are determined, where it is mentioned in the article text: « The provisions of the article **17** will apply whenever the aggregation endeavors to realize a limit of more than **40%** of the sales or purchases done in a given market ». And here, it is indicated that the percentage raised by 10% over what it was previously according to the article **12** of the ordinance **n: 95-06 (annulled)**¹, that was estimated at **30%** of the sales done at the level of the internal market in terms of merchandises and services, therefore, this shows the keenness of the Algerian legislator to dilate the freedom of economic aggregations in the line with the economic requirements. Hence, the economic aggregation process is not submitted to surveillance procedures unless the companies that are concerned with the concentration process overtake the **40%** share, whether they are purchase processes or sales in a given market as a quantitative criterion, for many purposes, including eliminating the small processes that have no impact from the application field, besides to adopting the market share as a criterion of surveillance, because by indicating to the article **17** of the ordinance **n: 03-03** that is related to competition, it stipulated: « Any aggregation may affect the competition, precisely by enhancing the position of an institution in a market... ». So, we find that the Algerian legislator did not precise whether the market in which the institutions concerned with the aggregation process are active is internal or external, contrary to what was the case in the article **12** of the ordinance **95/06** that is related to the competition, and which is annulled: « The provisions of the article **11** above will apply whenever the aggregation project or pool endeavors to realize, or has already realized more than **30%** of the done sales on the level of the internal market of merchandises and services ». Therefore, we notice here that the matter is limited to only the internal market unlike what was mentioned in ordinance **n: 03/03**.

Thus, we say that the Algerian legislator did not eliminate the foreign markets from the domain of the competition council's specialization, and this is the order that the executive decree **n: 05-**

¹- Ordinance n° 95/06 of 25 January 1995 on Competition.(annulled)

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219¹ had confirmed that is related to the licensing of the economic aggregations processes which was issued on **July 22, 2005** concerning the obligation of decelerating the figure of the activity works that is concerned and achieved abroad, because the competition council cooperates with foreign authorities that are in charge of competition when the matter comes to the foreign market.

It is also worth mentioning that overtaking the legal limit is not enough to make the aggregation process the subject of study and surveillance by the competition council², but, there must be another condition beside it, which is that the aggregation process should not affect competition, which is stipulated in the article **17** of the ordinance **n: 03-03**: « Any aggregation that affects competition, particularly by enhancing the position of an institution's dominance over a market... ». The purpose behind prejudice to competition is every negative change that occurs in the market structure in a image that leads to obstructing the free competition and appearing the dominance positions over the market, however, the competition council keenness to provide the appropriate conditions to realize the economic progress without neglecting the enhancing of the position of dominance in the market that the Algerian legislator had stated as an example, as one image of practices that would prejudice the competition and leave the field open to various other images, whether it is an economic dependency situation or something else.

Section II: Surveillance Procedures on Economic Aggregations

In spite the stipulation the separation and merger legality between institutions and economic projects, taking contributions in other companies, and establishing aggregations because it enters in the field of exercising commerce and industry freedom, however, on the other hand, the Algerian legislator stipulated that these projects submit to surveillance via a series of procedures that consist a guarantee for the preservation of the competitive environment, and the effects of the aggregation process on competition and balance in the market, and this is what we will discuss as follows:

¹-see: Executive Decree n° 219-05, dated 22 June 2005, op.cit.

² -see: Executive Decree n° 2000-315, dated 14 October 2000, establishing measures for the estimation of clustering or clustering projects, n° 61, issued October 18, 2000.(annulled)

A) Procedures shriveling the economic aggregation

Economic aggregations' submission to the surveillance is not considered as a tying on the commerce freedom, nor does it constitute an obstacle to institutions, as much as it is a certain guarantee of competition freedom. Therefore, it provides a fundamental tool for the economic growth, because the commercial law had stipulated the merger and separation legality, besides to establishing economic projects. Whereas, on the other hand, the competition law had stipulated in the second paragraph of the article **17** that its submission to surveillance in case of affecting the competition in the market, and according to conditions that the article **18**¹ had determined of the same law as we have seen before.

Therefore, nothing is concerned with surveillance except the aggregation which the institutions that enjoy the economic power and have a strong influence over the competition carry out, also, the extent of the economic power that is obtained by the aggregation according to specific criteria is appeared, and the law presumes that reaching them will lead to prejudice to competition. Consequently, the aggregation process is presented to the competition council for examining it according to the executive decree **n: 05-219** that is related to the licensing of aggregation processes for confirmation, and it was mentioned in the article text **17** of the competition law: « Every aggregation that would affect competition, especially by enhancing the position of an institution's dominance over a given market; its possessors must be submitted to the competition council ». From this we understand that the economic aggregation process is submitted to prior surveillance through the beforehand announcement process that is carried out by the aggregation process' possessors before its foundation in order to obtain a license, with providing all the information and details that are related to the aggregation process which is desired to be established, without going beyond to execute it in the concerned market for the purpose of the licensing the aggregation by the competition council according to the article text **20** of the competition law².

¹ -see article 18 of Ordinance n° 03-03 on competition, *op.cit.*

² - the article 20 of order n° 03-03 stated: " the owners of the assembly cannot take any measure to render the assembly irreversible within the time limit for the decision of the Competition Council."

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Concerning the surveillance procedures, the competition council carry out also to study the announcement presented to it via conducting a profound and delicate analysis of the aggregation process, as well as conducting secret investigations with the parties concerned with aggregation, then it consults the minister of commerce and the concerned minister with the aggregation process according to the text article **19** of the competition law, as well as sending a copy of the announcement file to the control authority which will establish economic aggregation processes in its sector in order to express its opinion in a precise period according to the text article **39** of the competition law¹.

Also, it is needed to indicate that the competition council carries out to analyze and study the predicted consequences of the aggregation process on the market, as well as carries out to analyze the position of each institution inside the market during the time of presenting the licensing demand for the sake of knowing the different changes that are supposed to occur according to the aggregation process. So, if the competition council is convinced after studying all the positions, be sure, and examine the aggregation process that the concentration process does not affect the competition, it permits establishing it whether in or without conditions, but in case economic aggregations affect the competition, in this position the competition council issues a decision of rejecting the aggregations while institution preserves its right to appeal², also, in some cases, in spite of the disapproval of the competition council to grant license to aggregate for reasons that are related to the lack of presenting guarantees by the possessors of the merger, or their inability to remedy the effects that were produced by the process, the Algerian legislator allows the possessors of the aggregation processes to refer to the government to grant them the license, and this is what the article **21** stipulated of the competition law : « Government can automatically authorize if the public interest requires so, or upon request of the concerned parties of the aggregation which was rejected by the competition council, and this is based on the decree of the minister in charge of commerce and the minister in charge of the sector which is concerned with aggregation », and the article **21** added a clause of the same law that, from the

¹ - see the text of article 39 of the competition law, *ibid*.

² - Mohammed Ben Ezza: *Study on the principles of freedom of competition in Algerian competition law*, *Symposium Journal of Legal Studies*, 2013, p 258.

surveillance sector emerge economic aggregation processes that are produced by applying a legislative and regulatory text, and all that is a confirmation on the political nature of the surveillance process which the public authority preserves in executing its policy concerning the competition inside and outside the market. Also, the relative limit that is stipulated in the article 18 that is mentioned before will not be applied on the economic aggregation whose owners are proven to contribute to achieve progress¹, and work to bring social advantages such as improving business and allowing medium and small institutions to change their competitive position in the market because these advantages can cover and remedy the negative effects on the competition.

B) Effects of surveillance of the economic aggregation

After the competition council studies the license demand that is presented by the economic aggregation's owners, two kinds of decisions will be issued either granting license by the competition council or government, or rejecting to grant the aggregation license, and in this case, its owners have the right to appeal.

1- Acceptance of the aggregation license:

The competition council is considered to have the original specialization to grant licenses to the economic aggregations, where the legislator empowered this authority to it after taking the opinion of the minister of commerce and the minister in charge of sector concerned with the concentration process. The competition council decides on the demand presented by the owners of the economic aggregation with acceptance directly, or granting aggregation license with imposing conditions that take the form of guarantees and preservations, and in the case of they are not respected and adhered to, license will be withdrawn from them later on, also the competition council can give the license acceptance decision even if the economic aggregation affects the competition², and here the competition council is obliged to give reasons for its decision which is the subject of abolishment action in front of the state council according to what the

¹ - Elayeb Chabaan: *Role of the Competition Council in monitoring economic groupings in Algerian law*, *Journal of Legal and Political Sciences*, Bejaia University, n 12, 2016, p 103.

² - Kamel Ayet Mansour, *the role of the competition council in surveilling the economic aggregations. the academic journal for juridical research. issue 12, 2015.* university of Abederrahmane Mira Bejaia, 2015, p156.

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article **07** of the law **n 08-12** had stipulated, and which related to the competition as amended and supplemented. Also, government besides to the competition council can give illegal economic aggregation license which the competition council had rejected if the public interest requires so, where it is mentioned in the article text **21** of the decree **n :03-03** which related to the competition that government can authorize the economic aggregation which is rejected by the competition council if the public interest requires so¹. Accordingly, the public interest was adopted as a criterion that reflects the different economic and social fields as long as it contributes to evolving the creative abilities and improving the productivity of the concerned institutions, including the social domains that help to improve the level of working.

As well as a decision of granting license to the economic aggregation that affect competition is released in case of there is a legislative or regulatory text that justifies them, or if these economic aggregations contribute to improving the competitive position of the small and medium institutions within the markets, as well as improving the work, and this is what the article **21** bus of the decree **03-03** had stipulated: «The aggregations of institutions that are resulted from applying a legislative or regulatory text are authorized, in addition to this, the stipulated limit in the article **18** above will not be applied on the aggregations which their possessors can prove that they lead especially to the evolution of their competitive abilities and contribute to improve working as well as permitting the small and medium institutions to enhance their competitive position in the market». And as we have mentioned before, the legislator aimed behind that to increase the efficiency of the common institutions in order to achieve what we call the economic progress for realization of the public interest in the end, as permitted by law.

2- Decision of rejecting the aggregation license:

The competition council issues a decision of rejecting the demand of licensing the economic aggregations if it comes clear to it that the latter form an obstacle in front of the institutions that activate in the market and result negative effects on the competitions. The

¹ - Mohamed Elcharif Katou, *protecting the consumer from anti competitive practices, the journal of administration, issue 1, 2002, p24.*

article **19** of the decree **n 03-03** related to competition stipulated the competition council is obliged to take its decision after justifying it and taking the opinion of both the minister in charge of commerce and the minister which the concentration submitted to his sector, where it stipulated : « The competition council can authorize or reject the aggregation by a justified decree, after taking the view of the minister in charge of commerce... », also the article devoted that the possessors of the rejected aggregation preserve their right to appeal in front of the state council. In the midst of the issued decisions by the competition council that are in the process of being executed, it carries out to announce them to the concerned parties via the judicial record, also it is sent to the Minister in charge of commerce, and this is according to the article text **47** of the same order amended in law **12/08**¹.

The competition council's decision concerning the rejection of aggregation will be challenged in front of the council of state, contrary to the rest of the other decisions that are subject to appeal in front of the commerce chamber of the Algiers judicial council, also the competition council does not have authority concerning the challenged decision, except the power to cancel or confirm it without amending it², with indication to the competition law did not contain the issue of a challenging date in the rejection decision, and this leads us to refer to the general rules³.

In the case of competition council's rejecting decision to authorize the aggregation is not respected, financial penalties will be imposed on the possessors of the economic aggregation, according to the article text **61** of the ordinance **n: 03-03** which is related to competition: « Penalties are imposed upon the economic aggregation processes that are stipulated in the provisions of the article **17** above and that were done without an authorization from the competition council⁴, via financial fine that can reach a limit of **07%** of the

¹ - Law n° 08-12 of 25 June 2008 on Competition, LGBL.n° 36, issued on 02 July 2008.

² - Dhrifa Moussaoui, *the role of ordinary judicial bodies in executing the competition law. master's theses, college of law, 2011, p120.*

³ - Ammar Boudiaf, *cancellation lawsuit in the law of the civil and administrative procedures. Dar of bridges for publishing and distribution. Algeria, 2009, p127.*

⁴ - Amina Mekhachena, *mechanisms of activating the principle of the free competition between the Algerian and French legislation. PhD theses in law. university of Batna 1, 2007, p187.*

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turnover without fees, achieved in Algeria during the last closed financial year against each institution that is a party to the aggregation or the institution that was formed by the aggregation process ». In the case of conditions and commitments imposed on the institutions concerned with economic aggregation are not respected, as stipulated in the above mentioned article **19**¹, which would relieve and remedy the negative effects of the aggregation on competition, Here, the competition council carries out according to the article text **62** of the same order to impose a financial penalty of a maximum of **50%** of the turnover without fees, achieved in Algeria during the last closed financial year, with indicating to the amendment which the law **12/08** had brought and which is related to competition had determined the criteria on which financial penalties are evaluated, given the extent of the damage to the economy, the institution's position in the market and the riskiness of the practice committed.

Conclusion

In the light of our study of the theme of surveillance mechanisms on the economic aggregations, from the side of whether the conditions for exercising surveillance are fulfilled as a result of monopolistic tendencies that affect competition in the market, the institutions concerned with economic aggregations must pursue a range of procedures in order to obtain a license from the competition council, and if it requires so, the government interferes in order to grant a license, and all this is for protecting the free competition and preserve the commercial relations in a manner that serves the public economic system.

The concentration of institutions and their transforming into huge units through what is known as economic aggregations that take several forms, whether they are a merger process or something else contributed to preserve the independence of the small and medium companies that are unable to enter the severe competitive game, as well as facing the dominance of the companies that possess most of the market shares, where laws have been drafted that contain mechanisms and rules that protect the free competition and oblige the economic aggregations' projects to be submitted to the surveillance of the competition council.

Besides to the competition council's specialization as a specialized authority in shriveling the economic aggregations and

¹ -Article 19 of Order n° 03-03, *op.cit.*

granting authorization to establish or reject them, we find that government interferes in the function of granting authorization for the sake of achieving the economic public interest, as well as working on applying all that is new in this field.

Among the most important achieved results :

- Economic aggregation dresses a considerable importance in supporting competitiveness within markets, and improving the products quality at the lowest cost in return for raising incomes.
- Free competition laws work on supervising and organizing the economy through correcting the behavior of economic agents concerning their foundation of the economic aggregations based on monopolistic methods and market domination, which requires shriveling them according to previously precise procedures, and if the matter requires, imposing fierce penalties as a consequence of affecting the competition and violating the obligations and conditions which are imposed legally.
- The surveillance mechanism work on realizing the balance between the economic interest and the interest of the institutions in the market which is done in preceded and pursued manner, in order to avoid negative effects of domination in the market.
- The competition council is the only one that takes the rejection decision of the economic aggregation, and this does not occur unless after taking the opinion of the minister in charge of commerce and the concerned minister, besides to the submission of the decisions of rejecting aggregation to the council state's surveillance, including the jurisdiction to consider appeals.
- Excluded from the surveillance that the competition council exercises over the small and medium institutions if its target is to enhance their economic positions in the market.

In the light of what is preceded, we can suggest some recommendations :

- The need to establish criteria for evaluating economic aggregations, as it is the case in Tunisian legislation, which have restricted the work of the Algerian Competition Council, due to the absence of legal

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justifications based on the process of evaluating the aggregation and accepting or rejecting it.

- Detailing the procedures for government intervention through licensing the establishment of the economic grouping, especially since the concept of public interest is very broad, in order to guarantee the independence of the Competition Council in its control function.
- Provisions concerning appeals against the competition council's decisions should be considered, especially those against the decisions of rejecting aggregation in front of the council state, contrary to other decisions that are appealed in front of the ordinary judiciary, in order to avoid contradictory jurisprudence and a conflict of jurisdiction.
- Supporting SMEs within markets, as they play a significant role in achieving the country's economic development.
- Make the Competition Board's opinion an element to evaluate the licence application in the compilation files requiring the licensing of sectoral control authorities.

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