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THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES AND SECTORAL REGULATORS

Contribution from Algeria

-- Session II --

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1. Introduction

1. To meet the needs that globalisation has generated, Algeria has introduced a new economic policy involving a redefining of the Government's role and means of intervention, primarily in the form of private-sector participation in the management of certain public services and in economic decision-making.

2. Reducing the weight of the influence and power wielded by the Government in accordance with this policy required a number of legal and organisational measures aimed at eliminating monopolies, freeing up initiatives and encouraging entrepreneurship.

3. Consequently, over the past ten years, the government has steadfastly pursued a process of institutional and economic reform aimed at increasing investment and private shareholdings in public enterprises through partnerships, privatisations, competition and the award of franchises. As part of this process, an action programme has been put in place to allow the Government to gradually disengage itself from the funding, performance, operation and management of certain public services with a view to ensuring greater market liberalisation.

2. Reform of public services and creation of regulatory authorities

4. The reorganisation of public services in Algeria has made it imperative to update and revise the legal and institutional framework governing public service activities in order to improve the services supplied, facilitate the supply of new services and establish healthy, fair and transparent conditions of competition.

5. The use of independent regulatory authorities, set up specifically for this purpose, marks a decisive step forward in the process of good economic governance. These new instruments will be called upon to make a significant contribution to the shift from protectionism to a market economy based on free enterprise and competition.

6. These regulatory authorities will be a major instrument for the process of structural reform on which the public authorities have embarked. They will be the institutions to which the task of supervising and managing the technical, economic and administrative aspects of franchise contracts will be conferred and will act as the interface between the administration and franchise holders.

7. In addition, these bodies will provide the public authorities with a powerful tool for preventing situations likely to disturb the smooth functioning of the public service covered by the franchise or upset the balance of franchise contracts.

8. The independence of these regulatory authorities will ensure that the public interest and consumers' rights are properly safeguarded and that all actors are treated fairly and will allow them to provide objective rulings on conflicts and disputes, thereby making it possible to impose healthy and fair competition.

9. The Government's disengagement from economic management therefore consists in raising the market to the status of regulator in markets for public utilities whose regulation and oversight have been entrusted to such authorities, whose main task is to organise and support the dismantling of public utility monopolies while at the same time safeguarding the quality of public service and respect for users' rights.

10. As part of its continuing efforts to implement economic reforms, Algeria has started to put in place a number of sectoral regulatory institutions relating to such areas as electricity, gas, transport, water and post and telecommunications.

11. Until now, however, only the regulatory authority for post and telecommunications has been set up and started to fulfil its role in regulating the market in accordance with the new rules of competition that have been put in place. Its impact can clearly be seen in the mobile telephony segment where market conditions are highly competitive (several operators, rapid development of technology, volume of demand, lowering of costs and tariffs, etc.).

12. That the other regulatory authorities mentioned above have not yet been set up is due to the fact that the public authorities have adopted an incremental and flexible approach in this area to ensure that the right conditions are in place to create viable markets with regard to the sectors concerned.

3. Reform of the post and telecommunications sector and establishment of the Algerian Post and Telecommunications Authority (ARPT)

13. Until 2000, the post and telecommunications sector was governed by provisions under which the sector enjoyed a monopoly for both postal and telecommunications services. This situation generated numerous constraints such as relatively complex management procedures, lack of competition and inadequate self-financing capacity due primarily to low rates of debt coverage. Indeed, this state of affairs led to a major delay in the introduction of Internet services, data transmission and other value added services.

14. At the regional level, this situation resulted in slower network development compared with the countries of the Middle East and North Africa.

15. These constraints and shortcomings prompted the government to undertake a far-reaching reform of the sector from both a legal and an institutional standpoint by through the creation of an efficient legislative and regulatory framework for the sector and by promoting competition in order to encourage the development of networks and services, provide a high-quality public service at reasonable cost throughout the territory and open up the sector to the global economy. The reform of this strategic sector should take the form of development and promotion of postal services and information and communication technologies (ICTs). Noteworthy benefits of this reform include the creation of jobs relating to the sector, the encouragement of scientific research and the emergence of technology poles and technical skills that will generate new ICT-related jobs.

16. To achieve these objectives, the legislative and regulatory framework for postal services and information and communication technologies had to be completely revamped and a separation established between regulatory and control functions and those of operation and development.

17. Responsibility for sectoral policy and regulatory activities now lies with the Ministry of Postal Services and ICTs, while regulation of the post and telecommunications sector, as well as operation and development, have been entrusted to two separate operators:

- Algérie-Poste, a public establishment of an industrial and commercial nature responsible for the supply of postal services;
- Algérie-Télécom, an economic public enterprise (limited share company) for telecommunications.

18. The new legal system, enshrined in Law No. 2000-03 of 5 August 2000 which ended the years of monopoly, lays down the new rules governing the supply of postal and telecommunications services.

19. This Law reasserts the main prerogatives of the Government with regard to oversight and regulation of the post and telecommunications sector, while at the same time providing for operations in this sector to be opened up to competition. In addition, to allow the State to effectively exercise regulatory control over this market, the Law provides for creation of a regulatory authority.

20. The liberalisation of the markets for postal and telecommunications services led to their progressive opening-up to competition and to the promotion of private shareholdings and investment. This process was designed to maintain and develop the universal service over the entire territory to the greater benefit of all citizens.

21. This reform of the sector was also accompanied by the restructuring of the capital of the historical operator "Algérie-Télécom", which was subsequently divided into two historical operators (Algérie-Télécom and Algérie-Poste) which currently operate in a commercial environment subject to the new market requirements.

22. In addition, three new private operators have arrived in the market (Djezzy, Mobilis and Nedjma).

23. At the institutional level, this reform took the form of:

- Establishment, in May 2001, of the Algerian Post and Telecommunications Authority (ARPT) as the regulatory body for the sector responsible for ensuring that the market and competition function properly and for safeguarding the general interests of users.

The main tasks of the Authority are to:

- verify that effective and fair competition exists in the post and telecommunications markets and to take any action required to promote or re-establish competition in those markets;
 - gain access to information held by operators in order to carry out its assigned oversight and regulatory duties;
 - arbitrate in disputes between operators
 - co-ordinate, at the national level, number assignment and lay down the conditions under which requests from operators for number assignments must be met;
 - lay down the conditions for the use of broadcasting frequencies by operators;
 - punish infringements of the legislation and regulations in force.
- the creation of Algérie-Poste as a public establishment of an industrial and commercial nature in January 2002;
 - the opening-up to competition of the GSM mobile telephony segment in July 2001. As part of this process, the operator ORASCOM has been selected under the terms of the licensing procedure;

- the creation of the National Frequency Agency (ANF) as a public establishment of an industrial and commercial nature in March 2002, the Algerian Space Agency (ASAL) in May 2002 and the National Radio-navigation Agency in July 2003.

4. Impact of competition rules in the mobile telephony sector

24. Over three years after the mobile telephony sector was opened to competition, the initial results have been genuinely encouraging in that Algeria currently has around 4 000 000 GSM subscribers.

25. The three mobile telephony operators, Djezzy, Mobilis and Nedjma, have respective totals of 2 718 000, 640 000 and 105 000 subscribers. In terms of market share, Djezzy has 78% of the market, Mobilis 19% and Nedjma 3%.

26. These figures far exceed the forecasts by both the sector and the regulatory authority which expected the market to grow to 3 million subscribers by the end of 2004 (i.e. a mobile telephone penetration rate of 9.37%).

27. Algeria, which has a population of 32 million inhabitants, currently has a mobile telephone penetration rate of 11%. It is also well within the bounds of possibility that forecasts of 5 million mobile telephone subscribers (11% penetration) by the end of 2000 will be significantly exceeded. By 2007, the number of subscribers should rise to 10 million.

28. Furthermore, it is worth noting that the number of subscribers in the domestic market (all operators combined) has risen by 54 000 at the end of 2000 to the current level of almost 4 million, which reflects the stiff competition between the three operators mentioned above.

29. The statistics for the division of market share and strength of competition between the three operators (Djezzy, Mobilis and Nedjma) demonstrate the fast-changing nature of this market and its vigour.

30. This process is continuing through the downwards trend in prices observed in particular with regard to the cost of chips which are currently offered at zero dinars by Mobilis compared with the 2000 price of almost 26 000 Algerian dinars (DZD).

31. In addition, the operators are constantly improving the quality of their services, notably by offering incentives to buyers and premiums.

32. This positive market development benefits consumers, whose needs are therefore fully satisfied in terms of value for money.

5. Relationship between the Competition Council and the regulatory authorities

33. Ordinance No. 03-03 of 19 July 2003 on competition vests the Competition Council with general powers to issue opinions and take decisions likely to safeguard and maintain the free play of competition in the market and to sanction practices that restrict competition, in conjunction with the various institutions concerned.

34. Consequently, in accordance with the provisions of Article 39 of the Ordinance on competition, the Competition Council is called upon to develop a relationship of close co-operation and co-ordination with the regulatory authorities responsible for networked public services.

35. Moreover, this legislative system provides for co-operation and decision-making within a framework agreed and organised by the Competition Council and the regulatory authorities whenever the latter are concerned by the cases examined.

36. Furthermore, the provisions of Article 13 of Law No. 2000-03 of 5 August 2000 setting forth the general rules relating to postal and telecommunications services charge the post and telecommunications regulatory authority (ARPT) with the task of co-operating with other national and foreign authorities or organisations with the same remit. They can therefore collaborate with the Competition Council whenever a practice that restricts competitions affects the regulated sector and requires recourse to the authority of the Competition Council to deal with the conflict.