Protect the recipient of know-how from restrictive conditions under the Competition Law

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الملخص

يحرص مورد المعرفة الفنية على إدراج بنود في عقود التراخيص التي تشمل حقوق الملكية الفكرية و تهدف إلى إحكام سيطرة المرخص على المشروع المرخص له و حرمانه من الدخول في حلبة المنافسة في الأسواق المحلية و العالمية. لذلك يعتبر قانون المنافسة وسيلة فعالة لحماية الطرف الجزائري كمتلقي للمعرفة الفنية من هذه الشروط لأنه يمنع الممارسات المنافية و المقيدة للمنافسة، غير أن هذه الوسيلة غير كافية أمام عدم تنظيم العقود الناقلة للمعرفة الفنية في القانون الجزائري و لاصطدامها بالمبادئ العامة المتعلقة بتنازع القوانين، الامر الذي يقف عقبة امام سياسة فتح المجال للاستثمار الاجنبي و استفادة اليد العاملة المحلية من العمل في هذه المشروعات، لذلك نقترح على المشرع الجزائري تسمية عقد نقل التكنولوجيا في القانون التجاري مع تحديد الشروط التقييدية الباطلة و التمسك بالاختصاص القضائي الوطني في النظر في المنازعات المتعلقة بعقود نقل التكنولوجيا لحماية الطرف الجزائري المتلقي للمعرفة الفنية بصفة خاصة، و حماية الاقتصاد الوطني بصفة عامة.

الكلمات المفتاحية: معرفة فنية- شروط تقييدية- حماية- المرخص له- قانون المنافسة.

Abstract

The supplier of technical know-how is keen to include clauses in licensing contracts that include intellectual property rights

and are intended to tighten the licensee's control over the licensed project and to prevent it from entering the arena of competition in the local and international markets. Therefore, the competition law is considered an effective means of protecting the Algerian party as a recipient of technical knowledge from these conditions because it prevents unfair and restrictive practices. However, this method is insufficient to regulate the contracts of technical knowledge in Algerian law and to clash with the general principles of conflict of laws. An obstacle to the policy of opening the Jalal for foreign investment and the benefit of the labor force to work in these projects, so we propose to the Algerian legislator to designate a contract transfer of technology in the commercial law with the definition of the conditions of restrictive and false and adherence to jurisdiction National Da'i in the consideration of disputes relating to contracts of technology to protect the Algerian party receiving technical knowledge, in particular transport, and the protection of the national economy in general.

key words : know how -Restrictive conditions - protection - licensee - competition law.

Introduction

The vector of know- how[1]imposes on the importer unfair conditions that restrict his freedom to use the know-how he receives. The importer of know how the weak party in the contract - accepts these conditions reluctantly to the extent of his need for know-how, so that the contracts conveying know how or technology are contracts of obedience[2].

Developed countries are keen to keep the know how under their control and transfer it to developing countries only on restrictive terms that ensure their use in accordance with their political and economic interests, leading to an increase in the technological gap between the north and the south. The developing countries have resorted to these restrictive conditions because they impede development and deepen their dependence on developed countries. At the UN conferences and many other international organizations concerned with the interests of developing countries[3].

In return for the situation in Algeria, and in the absence of organizing technology transfer contracts, including the transfer of know-how, can the algerian party as a recipient of know-how use the provisions of the competition law to protect it from these restrictive conditions that hinder the development of its activities and undermine the development of the national economy?

This is the problem we deal with In two chapters: restrictive conditions in the contract of know-how (chapter 1), competition law position of restrictive conditions (chapter 2).

Chapter 1

Restrictive conditions in the contract of know-how.

The completion of the process of transfer of know-how from its contentors is a fundamental objective for the suppliers of know-how, which are usually in large projects of different legal nature and their different nationalities. This objective is to include a set of restrictive conditions in contracts of transfer of know-how to achieve monopoly in The global market and to ensure the extension of control and influence on these markets, what are the restrictive conditions? (Section 1) And what kinds? (Section 2).

Section 1

Define restrictive conditions.

Developing countries are looking to acquire know-how unconditionally, but not to pay the agreed price. In return, developed countries are keen to keep the know-how they carry in their hands, giving them conditions and restrictions to ensure that their use is directed in accordance with their interests.[4]

As the transfer of know-how carries with it the risk of creating competitive production capacities, the main concern of the know-how providers is to try to maintain their control over the transferred know-how, by controlling the project receiving the know-how using multiple legal mechanisms, the limitation of know-how transfer contracts with a view to reducing the competitiveness of the recipient project to reduce the competitiveness of the recipient project and to ensure that it remains under direct and indirect control of the source project of the know-how.

Restrictive conditions in contracts for the transfer of know-how shall mean the set of restrictions imposed by the supplier of know-how on the recipient when the contract is concluded in order to restrict the latter's freedom in many areas, whether in the use of know-how, production marketing, project management or the development and adaptation of know-how,the recipient often acquiesces to these arbitrary practices for his or her urgent need for know-how. Developing countries[5] have always had negative effects on these conditions.

Due to the diversity of the restrictive conditions and their different nature, it seems difficult to develop a uniform definition, but it is agreed that these are arbitrary conditions that constitute serious harm to the freedom of competition, unjustified restriction of the project receiving the know-how, the united nations conference on trade and development, defined as restrictive practices and conditions in contracts for the transfer of know-how, is defined as a set of harmful acts and actions by enterprises through the abuse of their strong and monopolistic position in the market, reducing market access and restricting competition as well as the negative and harmful effects of international trade[6].

A trend of jurisprudence[7]has tended to define restrictive conditions as: the actions of some institutions that restrict access to markets or unfairly restrict competition and have adverse effects on world trade.
It is noted that the previous two definitions focused on the adverse effect of restrictive conditions and the prevention of competition, and considered them the main objective behind the imposition of restrictive conditions, and these two definitions are not to refer to the main purpose of imposing these conditions and not to clarify their impact on the objectives of developing countries from the transfer process know-how.
Finally, restrictive conditions can be defined as the arbitrary conditions imposed by the supplier party for know-how in contracts for the transfer of know-how, as the strongest party that owns and controls the know-how, in order to limit the commercial and technological activity of the recipient and maintain the technological gap between the developed countries and Developing countries, to which the receiving party complies without discussion as a result of its strong need for know-how and its lack of availability in the domestic market.

Section 2
Types of restrictive conditions

In reviewing the previous definitions of restrictive conditions, we note that they aim to keep the supplier in control of know-how, limit its business activity, and prevent the development of its own technological capabilities, for fear of gaining and controlling them.
In view of the fact that these restrictive conditions can not be limited, most of the jurisprudence tried to divide these conditions into two groups that actually constitute the sub-sections of this study: restricted conditions for economic and commercial independence(1), restrictive conditions for technological independence (2).

1°. Conditions restricting economic independence

It is an indirect consequence of the exercise of industrial property rights and is an effect of the unequal bargaining power of the parties to the contract.

This group is divided into three categories: restricted terms of the recipient project(A), Conditions for limiting access to foreign markets(B), and restricted conditions for marketing methods(C).

A. Restricted terms of the recipient project

It is of two types:

- Controlling the quality of production and quality of the product.
- Control the quantity of production (conditions of commitment to supply).

These conditions may materialize in such a way that a licensee who wishes to acquire a particular technology must purchase all other elements, such as patents, or expenses of limited or no benefit.

These conditions may also be embodied in the imposition of compulsory purchase, which is one of the most restrictive conditions common in contracts for the transfer of know-how.

In addition to the compulsory purchase and purchase of accumulative licenses, there is a quality control condition, the condition of the obligation to supply and the two conditions that are monitored by the supplier justified by not reducing the know how possessed by the supplier.

Thus, the frequency of the supplier on the receiver's facility becomes constant to ensure that the restrictive quality obligation, which is closely related to the requirement of compulsory purchase, spare parts for goods and means of production from certain locations, is determined by the same supplier.

This control has dire consequences, of course, where the process of non-conformity with the quality standards and other conditions above leads to the withdrawal of the right to exploit the know-how.[8]

B. Conditions for limiting access to foreign markets.

These are regional restrictions aimed at ensuring a geographical distribution of the international market in accordance with the strategy of the technology supplier[9], which in turn is based on two types of constraints:

- Prevent the recipient from export in whole or in part.

- Receiving the supplier's approval before export.

In the first case it may be a list of countries in which the recipient is allowed to export its production to it, which is placed according to the interests of the supplier in the markets of these countries and often the objective of the supplier not to allow the export of certain countries to have influence in these markets, or have In which subsidiaries or have previously waived the industrial license in the same markets that prevent the recipient from exporting its production to them, and these conditions of the most dangerous factors and damage to the freedom of competition and ease of flow of international trade[10].

These conditions also deprive the recipient of know-how from making profits that cover the high costs he pays for what he gets from the contract.

It also deprives the recipient of foreign currencies that can be obtained for his products in a particular region, and this in turn causes damage to the national economy of countries, especially developing ones[11].

Such a condition enhances the monopoly status of the supplier and can more and more technically, economically and financially.

C. Restricted conditions for marketing methods

The seriousness of such conditions is that they may extend even after the contract period[12], and the supplier usually presents a clear cause that does not reflect the true intentions of the supplier in order to ensure that the specifications and standards agreed upon in the contract are implemented and that he is responsible for them[13], thus, in the negotiations stage, the receiver is persuaded to exercise periodic control over the factories and facilities of the recipient. This may lead to a more serious situation. He is persuaded to participate in his departments or to contribute to the capital of the project, from which he reaches his goal, which is to control the receiver or Control the progress of the project, which takes in this mode of conditions several pictures in its entirety of the commercial freedom of the recipient they may be:

- Defining the methods of publicity and advertising.

- Non-competition agreement.

- Quality control.

- User operating agreement.

- Exclusive representation agreements.

- Sales agreements.

- imposing a certain distribution of the product.

- The imposition of a higher price for a product that exceeds the price of its external market, in order not to compete with the prices of the products of the supplier of know-how, especially if the recipient of developing countries have certain advantages, such as the provision of raw materials and raw materials and the shortage of labor wages in his country.

2°.restrictive conditions for technological independence

Jurisprudence divides these conditions into conditions in the contracting stage and conditions that extend beyond the contracting stage[14].

Not only does it not only benefit the transferred know-how, but also prevent it from being developed according to the personal abilities of the recipient.

The main images included in this set of restrictive conditions during the validity of the contract are: non-conflict (A), preventing the development of transferred know-how(B), and restricting the technological activity of the recipient (C).

A. Non-conflict

The restrictive requirement of non-conflict means that the recipient does not have any legal dispute over the validity of the contract, particularly with respect to the patent, trademark or trade name.

This monopolistic method results from a legal basis on which the supplier relies, ie, legal monopoly. It is the legitimate protection of industrial and intellectual property and the protection of know-how according to the supplier's opinion[15].

This condition has negative effects on the recipient. The recipient may find himself after the approval of this condition, exploiting the know-how that is not valid, neither legally nor practically, either by law, the patent may have expired and become the property of all[16] (of course, in

the case where the contract is a know-how, in part associated with a patent). In practice, it may be clear to the recipient that the use of the know-how is useless and invalid.

The prior implicit acknowledgment of the validity of the transferred know-how by agreeing to the arbitrary requirement of non-conflict binds the receiver's hand in this claim and becomes in the position of being compelled to accept incorrect and invalid know-how.

B. Preventing the development of transferred know-how

These conditions are particularly prevalent among two technology-equivalent parties, particularly among companies in the same group. Statistics show that about 94% of the research and development by parent companies in the United States is prohibited to nascent companies in the rest of the worl[17].

As for the developing countries, they are required to adapt the know-how according to their local circumstances. As for the necessary improvements, conditions may also be imposed on the supplier as the original owner of the know-how. The recipient may use or assign it to third parties or prevent him from doing so. Any renewal thereof may grant the recipient consent to use it or assign it to third parties or prevent it from doing so.

C. Restricting the technological activity of the recipient.

These are the conditions of determining the scope of use of the transferred know-how or of prohibiting their use in another domain, as may be reflected in the prohibition of their use in another area, as may be reflected in the prohibition of their use in a certain manner.

This will tie the receiver's hand and restrict it to a certain circle of activity and specifically the contract, which impedes the use of know-how with other products that he sees as achieving commercial profits or industrial advantages or developmental goals.[18]

The supplier is aware of the day when the legal protection of his know-how, which in turn gives him a legal monopoly, may expire. This delay may be due to the disappearance of the privileged nature of the

know how or the end of the movable industrial property rights. He is also aware of the expiration of the contract term, which places him in a position where there is no legal basis for imposing economic and technological control.

For this reason, we find it calculated for that day, which is to stipulate not to use the information and know-how transferred under the contract ended with the return of all documents and maps approved for the completion of the project and its activity. Permanent and absolute subordination.

Through the above, the global conglomerates and giant corporations have shown their control over the developing countries in general[19]by imposing harsh conditions. The latter, including the maghreb countries, have shown that the internal organs are unable to adapt to the development of international demand and therefore the inability to compete with traditional markets such as the european market.

Chapter 2

Competition law position of restrictive conditions.

The dedication of the principle of freedom of trade and industry in Algeria came after the pressures exerted on it due to the economic crisis which it had known since 1986 due to the weakness of Algeria's income from foreign currency following the decline of oil prices which negatively affects the national economy.[20] Under these circumstances, the idea of embarking on profound economic reforms even in the algerian legal system increased the idea that economic openness and the opening of the initiative to privatization in order to participate in the revitalization of economic life in the country was an option.

The most important signs of the new system lie in the legislative decree on investment, and prior to that, the opening of foreign trade for each economic aid was confirmed by the regulation issued by the governor of the bank of Algeria concerning the conditions for the importation and financing of goods to Algeria, which states:"as of 01/04/1991, every natural or legal person duly registered in the register commercial bank can import all materials or goods that are not subject to a quantitative restriction or restriction on the basis of bank settlement and without prior authorization".[21]

In addition to these laws, the algerian state signed a partnership agreement with the european union, in which it was agreed on

administrative cooperation between the two parties in the implementation of their respective legislation in the area of competition and the law shared by the group. The algerian legislator has explicitly enacted the liberal economy and the transition to a constitutional text.[22]

However, recognition of the principle of free trade and industry does not necessarily mean the full withdrawal of the role of the state in the construction of the national economy, but its purpose is to shift from the intervening state to the control state. Where the legislator regulates the freedom of trade and industry by imposing sanctions on anything contrary to the legislation in force. Especially as economic agents resorted to some methods to expand their influence in the market and make quick profits at the expense of other economic agents, which prompted the legislator to take the necessary measures to stop these illegal acts. Under the competition act, several rules prohibiting the use of such activities have been issued and the control authority has been given to the competition board.

Therefore, in this chapter, we shall examine the practices of the licensee prohibited by the competition law (section 1), the role of the competition council (section 2).

Section 1

Practices of the licensee prohibited by the competition law

Of anti-competitive practices of the algerian competition law, which concerns the algerian economic aid as a recipient of know-how to protect it. We mention: prohibitio of restrictive trade agreements(A), arbitrary dominance or monopoly of the market(B), and the status of arbitrary economic dependence (C).

A. Prohibition of restrictive trade agreements

The agreement means the adoption of a joint plan by a group of economic agents (the wills of institutions that enjoy independence) aimed at violating the freedom of competition within a single market for goods and services. The agreement does not exist in the absence of this condition.[23]

The issue of the independence of the parties to the agreement is important in adapting the agreement prohibited by article 6 of the competition law[24]. In contrast, the agreement is intended to be express or implicit, either visible or hidden, contractually or in the form of friendly arrangements between the complicit parties, taking into account the

domestic laws of the relevant institutions or charters professional or trade union, as well as to be between natural or moral persons, but on the condition that they engage in economic activity.[25]

As for the effects of the agreement is the negative impact on competition by preventing or limiting or violating the rules, which may be expected or possible.

Among these agreements are those related to the subject matter of the study when they aim to reduce or control the exchange of know-how, depriving trading partners of the benefits of competition.

C. Arbitrary dominance or monopoly of the market.

The legislator addressed the arbitrariness resulting from hegemony or monopoly in the market in article 07 of the competition law[26].

Hegemony is the economic power of an enterprise, by which it can hinder competition in the market, with behavior that is sufficiently independent in the face of its competitors, its customers, and ultimately against consumers.[27]

Monopolization may be a dominant position in the market if the institution includes all the market shares[28], which makes it not subject to any competition, and thus as such has achieved a firm position of economic strength.

In this case, the prohibited act is not embodied in the mere dominance of the market, but is the exploitation of this hegemony, as is known, everyone who has power is capable of arbitrariness and the case of the owner of know-how, because every economic trader is always seeking to achieve the dominance and control of the market. Undoubtedly, the pursuit of this will greatly help to activate competition if not competition, if not in combination with abuse. However, if the monopoly is arbitrarily entailed by a market phenomenon, it is like a disturbance in the market. The commission must pay the cost of competition from working on not getting it because it is the first and last officer of the market, and the economic trader and if he is a foreigner can not impose his law in the algerian market.

C.The status of arbitrary economic dependence

The legislator exposed the arbitrariness resulting from the state of economic dependence in article 11 of the competition law. This was not under the repealed competition law. This type of practice was seen as

a form of abuse resulting from market dominance, but the development that took place over time made this is the opposite of what prompted the legislator to allocate a material to indicate the cases in which economic aid in the case of abuse in the exploitation of the status of dependency to another institution, for example[29].

Referring to competition law, economic dependence is defined as:« a business relationship in which an enterprise does not have a comparable alternative solution if it wishes to refuse to accept the conditions imposed by another institution,whether it is a customer or a supplier ».[30]

It is understood from this definition that the algerian legislator focused on the weak party in this commercial relationship, since the origin is that both parties have the same rights when concluding the contract, but in this case an institution has power over other institutions because the latter is forced to contracting the conditions imposed by the first institution, in the event of contracts with them to obtain the goods or service will be lost in view of what you will pay in return, and if the contract refused to stop the work and economic projects carried out by.

This is the case of agreements and contracts relating to the transfer of know-how between parties, which are often between a dominant party and a weak party, which can only acquiesce in what is imposed because of its strong need for know how for development. During a balanced contracts.

Section 2
The role of the competition council

In implementation of the policy of economic reforms which Algeria has embarked upon in order to comply with the market economy system, it has been entrusted with the task of regulating competition and controlling it for an independent administrative body called the competition council.

The council has been entrusted with a number of functions, including those of advisory powers and repressive disciplines aimed at controlling competition in the market in order to increase economic efficiency, as affirmed in article 1 of the competition law. And the question posed to the topic of the article concerns the role of the competition council in protecting the recipient of know-how from the practices of the donor of this restricted know-how of his activity, which has already been studied in the first chapter. For this purpose, the study in this section is divided

into two components: consult the competition council (A), the oppressive role of the competition council(B).

A.Consult the competition council

The consultation before the council is a means accessible to all participants in the economic and social life within the state, from public authority to simple citizens through consumer associations[31].

The recipient of the know-how may resort to the competition council as an expert in the field of the market, and if it is presented to him after his good study of the market and the expected distance from the transaction transfer of know- how in order not to fall into anti-competitive practices. The council's advice is mandatory and must be adhered to in respect of agreements or acts governed by article 08 of the competition law[32], where an executive decree was issued in application of this article, in which the failure of the competition council to grant a permit to conduct an activity is considered a competitive practice[33], and therefore the algerian party can protest against the grantor of know-how of these provisions in order to enjoy protection from any anti-competitive practice.

B. the oppressive role of the Competition Council

The competition council shall have the authority to impose penalties on parties found guilty of violating the rules of the competition law, in the form of hearings where all parties involved in the case are summoned and summoned by the president of the council[34]. In this context, the recipient of know-how as an institution or as a member of a professional association may file a complaint against the grantor if he / she becomes active before the competition council if the latter violates the rules of competition[35].

As for the penalties of the competition council[36], we find that all the penalties issued are financial sanctions in the first place followed by some administrative decisions in the form of orders for the institutions violating the work or refrain from work, and also vary the penalties prescribed by the competition council on the basis of criteria, The damage done to the economy and the benefits collected by the perpetrators of the violation, as well as the extent of the institutions with the council during the investigation and the importance of the status of the institution concerned in the market.

The decisions of the competition council are subject to appeal before the algerian district court, which is in dispute in commercial matters, and this is very necessary, especially in the case of looking for investors.

It should also be noted that the competition council has the competence, within its competence, to send information or documents it has or may collect to the foreign authorities in charge of competition with the same competences, if required, provided that the professional secrecy is guaranteed. The competition council may, at the request of the same authorities, undertake or commission investigations of restrictive practices. These powers shall be constrained by the inviolability of national sovereignty or the economic interests of Algeria or the internal public order.[37]

Conclusion

The study of the subject of protecting the recipient of know –how from the restrictive conditions of the algerian competition law shows that the latter, although providing some kind of protection to the recipient, is a limited protection, which requires further support, especially in the case of international agreements for the transfer of know-how, general principles of conflict of laws. We propose as a solution to this situation and to protect the algerian party from the restrictive conditions that are usually included in the contract of technology transfer in general and the contract of transfer of know-how as one of the forms of this type of agreement, naming the transfer of technology contract in the fourth part of the first book of the commercial law - commercial contracts and leave to revoke the restrictive conditions, especially those whose subject matter obligates the importer by order of the following:

- Accepting improvements to the technology and performance of the resource.
- Prohibition of improvements or modifications to technology to suit local conditions or conditions of the importer's facility, as well as the prohibition of access to other similar or competing technology for the technology in question.
- Use of certain brands to distinguish goods used in their production.
- Restriction on the volume, price, distribution or export of production.
- The participation of the supplier in the management of the importer's establishment or its involvement in the selection of permanent employees.

- The purchase of raw materials, equipment, machinery, equipment or spare parts for the operation of the technology from the supplier alone or from the establishments he appoints.
- The sale of the production or the power of attorney shall not be allowed to be sold to the supplier or persons he appoints.
- The necessity of the intervention of the algerian legislator and the inclusion of provisions relating to the protection of the recipient of know-how from restrictive conditions in a precise manner, as compared to what is in the egyptian commercial law as amended in 1994.

The most important of all is the rejection of any waiver of national jurisdiction in the consideration of disputes of contracts for the transfer of technology and even the determination of the cancellation of any agreement contrary to that, taking into account the serious and legitimate interest of the supplier of technology or know-how.

Footnotes

1- know-how is a set of knowledge or practical methods that are tested, movable, unreachable, non-patentable, and must give preference or competitive advantage to those who use it ; Michel Kahn, franchise and partnership, 5th edition, dunod editions, Paris, 2009, p. 14.

2 -The modern trend of jurisprudence is that the contract is a contract of acquiescence to be non-negotiable; that is, if the other party's acceptance of the contract is limited to mere delivery on pre-determined terms. See: Marty Gabriel et Raynaud Pierre, traité de droit civil : les obligations, tome 1, 2 édition, éditions Sirey, Paris, 1988, p. 123; Jacques Flour, Jean, Luc Aubert, Éric Savaux, droit civil, les obligations, l'acte juridique, tome1, 16 édition, éditons dalloz, Paris, 2014, p. 115.

This is what was adopted by the civil code in article 70, which states: "acceptance of the contract of obedience shall be accepted by mere delivery of the prescribed conditions established by the proposer and shall not be subject to discussion."

3- Developing countries are trying to modify the legal regime for technology transfer long ago. In 1961, at the request of Brazil, the united nations general assembly adopted a resolution inviting the secretary general to prepare a study on the role of patents in the transfer of know-how to developing countries. This was followed by a recommendation by the united nations conference on trade and development (UNCTAD) to take appropriate regulatory action on technology transfer to developing countries and to explore the possibility of amending the legal framework for technology transfer. Hossam El-Din El-Saghir, intellectual property licensing and technology transfer, presented to the national symposium of the world intellectual property organization, in cooperation with the ministry of commerce and industry and the omani shura council, Muscat, march 23-24, 2004, p.15.

4-Said Kahlat, changement techniques, organisation du travail et maitrise du system productif national, revue algerienne des sciences jurediques economiques et politiques, volume (xxx II) n° 1 1994, p 116.

5- Ahmed Kharou'e, proceedings of international development Law, university press, Algeria, 1995, p.57.

6-UNCTAD's most prominent work was to prepare a draft code of conduct for technology transfer. Although this project has not been completed, the legislation of developing countries has been influenced by the fundamental principles underlying its legislation. The organizations concerned with the interests of developing countries have made several attempts to assist developing countries in confronting technology exporting countries through the

publication of rules and guidelines for their work, the most important of which is a guidance manual on licenses issued by the world intellectual property organization in 1977 for the benefit of developing countries. Licensing guide for developing countries, a guide on the legal aspects of the negotiation and preparation of industrial property licenses and technology transfer agrements appropriate to the needs of developing contries, wipo publication n° 620/1977, Geneva, 1977, reprinted in 1992 and 1995 ; industrial development report 2016, the role of technology and innovation in inclusive and sustainable industrial development, UNIDO, Vienna international centre, Vienna, 2016.

7-Majed Ammar, technology transfer contract, dar al-nahda al arabiya, Cairo, 1987, p 92.

8- Hossam Mohamed Issa, technology transfer, a study in the legal mechanisms of international dependence, arab future house, Cairo, 1987, p.377.

9 - Nassira Boudjemaa Saadi, contracts for the transfer of technology in the field of international exchange, university press, Algeria, less than the year of publication, p.312.

10 -Ibrahim Hamad A. Al-Hamid, restrictive conditions in technology transfer contracts and their Impact on developing countries, master thesis, Cairo university, 2008, p. 86.

11- Samyha Al-Qalyubi, evaluation of contract conditions and compliance in technology transfer contracts, contemporary Egypt journal, issue 406, october 1986, p. 577.

12 - Ibrahim Hamad Abdul Rahman al-Hamid, op.cit, p. 126.

13- Ibid, p.89.

14-Ibrahim Kadem, the conditions restricted in technology transfer contracts and their role in the internationalization of technology dependence, PhD thesis, faculty of law, ain shams university, Cairo, 1996, p.320.

15- Richard A. Epstein, the disintegration of intellectual property? a classical liberal response to a premature obituary, stanford law review Vol. 62, No. 2 (jANUARY 2010), pp. 455.

16- Ibid. p.98.

17- Hossam Mohamed Issa, op.cit, p. 197.

18- Nasira Boudjemaa Saadi, op.cit, p. 311.

19- Salah mezdour, the imbalances in open economics (magreb case), algerian review of economical and political legal sciences, volume (xxxI), n ° 3 1993, p. 528.

20- Aqlouli Rabah Safia, the principle of freedom of industry and trade in algerian law, journal of law and political science, No. 02, 2006, p. 63.

21-Legislative decree No. 93-12 of october 05, 1993, relating to the promotion of investment, official journal dated 10 October 1993 ; regulation No 91-03, february 20, 1991, concerning the conditions for the importation and financing of goods for Algeria, official Journal No. 23, issued in March 25, 1991.

22-Constitution of the people's democratic republic of Algeria, official journal No. 76 of 8 december 1996, modified by: law No. 02-03 of 10 april 2002 official journal No. 25 of 14 april 2002, law No. 08-19 of 15 november 2008 official journal No. 63 of 16 november 2008, law No. 16-01 of 6 march 2016 - official journal No. 14 of 7 march 2016, article 43/1 : « freedom of investment and trade is recognized. It is exercised within the framework of the law. » ; Presidential decree No. 05-159 of 27 april 2005 on the ratification of the euro-mediterranean agreement establishing an association between the people's democratic republic of Algeria on the one hand and the european community and its member states on the other hand, signed in valence on 22 april 2005 2002, as well as annexes 1 to 6, protocols 1 to 7 and the final act thereto.

23-Saidi Abdelmadjid, presentation of anti-competitive practices, their controls and sanctions, article published 04/04/2011 on the website: www.ministèreducommerce.gov.dz

24-Order No. 03-03 of 19/07/2003 and related to competition, amended and supplemented by law No. 08-12 dated 25/06/2008, official journal No. 36 issued on 02/07/2008 and supplemented by law No. 10- 05 of 15/08/2010, official journal issue 46, issued on 18/08/2010.

25-Kato Mohammed Al-Sharif, objectives of the competition, national forum on competition and consumer protection, faculty of law, university of abderrahmane meera, Bejaia, 17-18 november 2009, p. 59.

26-Order No. 03-03, op.cit.

27- Boutard Labarde, Marie Chantal, Canivet Guy, french competition law, edition L.G.D.J, Paris, 1994, p. 71.

28-Thomas C. Arthur, the costly quest for perfect competition: kodak and nonstructural market power, New York university law review, 69 N.Y.U.L. rev. 1, 1994, p. 89.

29-Order No. 03-03, op.cit, the article states: « it is prohibited for any institution to abuse the status of the liability of another institution as a customer or supplier if it violates the rules of competition.

This arbitrariness is in particular:

- Refusal to sell without legitimate justification.

- Parallel or discriminatory sale.

- Conditional sale with a minimum quantity,

- The obligation to resell at a lower price,

- Cut off the business relationship simply because the client refused to undergo unjustified commercial conditions,

- Any other action that would reduce or eliminate the benefits of competition within the market».

30- Order No. 03-03, op.cit, article 3/5.

31- Ibid. article 35.

32-Order No. 03-03, op.cit.

33- Executive decree No. 05-175 of 12 may 2005, which defines the modalities of obtaining a non-interference permit for agreements and market dominance status, official journal No. 35 of 18 may 2005.

34-Order No. 03-03, op.cit, article 55.

35-Ibid, article 44/2 : « the competition council shall consider whether the practices and acts submitted to it fall within the framework of the application of articles 6, 7, 10, 11 and 12 above or based on the article 9 above».

36- Ibid, from article 56 to article 62.

37- Ibid. from article 40 to article 42.