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Mechanisms for regulating competition in the telecommunications market

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Abstract:

Telecommunications has become an indispensable sector in our lives, serving as a primary supporter of electronic commerce. Especially with most countries moving towards liberalizing their markets for free competition and transitioning to regulated competition, this competition has collided with the reality of the proliferation of practices that constitute restrictions or violations of the provisions of this competition in the telecommunications market.1 These practices have diversified into two categories: individual acts involving abuse of dominant position, and collective acts in the form of agreements and concentrations that contravene competition regulations.2 It has become necessary to regulate and restrict these practices to preserve fair competition through authorities that adopt supervision and control over them to prevent any infringement of competition rules in the market, whether it is domestic or international, especially if goods and services are imported.3 In this study, we shed light on the legal means and mechanisms aimed at protecting competition from these practices. If these practices exceed the permissible limits, they can lead to monopolies and market domination, resulting in harm to both customers and consumers on one hand, and to the national economy on the other.

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آليات ضبط المنافسة في سوق الاتصالات

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المستخلص

اصبحت الاتصالات من القطاعات التي لا غنى عنها في حياتنا بل صارت داعما رئيسيا للتجارة الالكترونية ، وخصوصا بعد اتجاه اغلب الدول الى تحرير اسواقها امام المنافسة الحرة واتجهت الى المنافسة المنظمة ، الى ان هذه المنافسة اصطدمت بواقع بانتشار اعمال تشكل تقييد او مخالفة لأحكام هذه المنافسة في سوق الإتصالات وتنوعت هذه الاعمال الى شقين (اعمال فردية متمثلة بإساءة إستغلال المركز المهيمن واخرى جماعية في صورة إتفاقات و تركزات مخالفة لأحكام المنافسة (، اصبح لا بد من تنظيم وتقييد هذه الاعمال للمحافظة على اشكال المنافسة السليمة من خلال جهات تتبنى الاشراف والرقابة عليها للحيلولة دون المساس بقواعد المنافسة في السوق الذي قد يكون سوق داخلية او خارجية اذا كانت السلع والخدمات مستوردا ، فضلا عن ان الدولة تخلت عن احتكارها للكثير من المرافق من خلال إتباع سياسة الخصخصة وسلمت مقاليدها للقطاع الخاص وضبط هذه السياسة من خلال التشريعات المتخصصة بذلك، وابز مثال على ذلك تخلي الدولة عن إدارة قطاع الاتصالات واسنادها الى الشركات الخاصة، وبذلك إنتقل هذا القطاع من إحتكار مؤسساتي أحادي تديره الدولة الى قطاع تنافسي(الى حد ما) تديره الشركات التجارية ، وهذا الامر استوجب ادارة سوق الاتصالات من خلال آليات متعددة لضمان المنافسة من الممارسات المقيدة لها .

فإننا في هذه الدراسة نسلط الضوء على الوسائل القانونية والآليات التي من شأنها توفير الحماية للمنافسة من هذه الممارسات التي إن تجاوزت الحدود المسموح بها أدت الى الإحتكار و السيطرة على الأسواق و ما ينجم عن ذلك من ضرر بالعملاء و المستهلكين من جهة ، وبالإقتصاد الوطني ككل من جهة أخرى.

الكلمات المفتاحية: منافسة ، حماية ، ممارسات ، اتصالات ، اليات ، جزاءات ، شركات .

Introduction

Competition is one of the most important pillars of the market economy and a tool to achieve benefits for all market parties. It provides an incentive for continuous development and innovation by goods producers and service providers. Consequently, it improves the quality of goods and services and reduces prices to attract as many consumers as possible who, in return, meet their requirements and satisfy their needs with high-quality goods and services at affordable prices. On the other hand, competition serves the interest of the state in developing the national economy in general, through achieving economic growth due to its impact on expanding commercial projects and increasing their numbers.4[1]

On the contrary, monopolies cause significant harm to consumers. Monopolies limit the quantities of goods and services produced in these markets, and prices are higher because they are monopolized by certain entities. Traders and commercial enterprises often seek to protect their trade from competition using legitimate or illegitimate means, putting them in a privileged position in the market that allows them to control competition mechanisms. In this context, the need arises to search for ways to counter the illegitimate means that constitute an actual or potential violation of competition rules. This requires state intervention at two levels: the administrative, through the authorities authorized for competition councils or regulatory bodies overseeing some sectors such as the Telecommunications Authority, and the legislative, by enacting methods of raising emerging lawsuits and litigation procedures and issuing judgments with the necessary measures and penalties and how to implement them, all with the aim of combating or limiting practices that violate competition.

The forms of monopoly are numerous, which occur through traders resorting to illegal practices with the aim of restricting or preventing competition without considering the public interest on the

(1) Dr. Muhannad Ibrahim Ali Fandi, The Legal Regulation of Anti-Monopoly, research published in Al-Rafidain Law Journal, a specialized, peer-reviewed quarterly magazine in legal sciences issued by the College of Law / University of Mosul, Volume 9, Twelfth Year, Issue (33), September (2007) , p. 49.

one hand, and the interest of consumers on the other. Practices that violate competition turn to acts or agreements that are legitimate in themselves, but they are prohibited when they restrict or violate the rules and provisions of competition between institutions in the market. Due to the danger of these practices that free competition and the economic process in general are exposed to, it required the intervention of the competent authorities by enacting laws that prohibit such practices. Countries have tended to issue legislation to regulate competition and control its mechanisms, relying on building legal standards that allow freedom of trade within the limits that achieve economic and social development and observe the rules of integrity and honor in commercial work.5[(1)]

The state has abandoned its monopoly over many facilities by following a privatization policy and handed over its reins to the private sector, and this policy was regulated through specialized legislation. A prominent example of this is the state's abandonment of the management of the telecommunications sector and its assignment to private companies. Thus, this sector has moved from a single institutional monopoly managed by the state to a (somewhat) competitive sector managed by commercial companies. This matter required the management of the telecommunications market through multiple mechanisms to ensure competition from practices that restrict it.

1- Problem Statement:

Despite the entry of competition into the Iraqi telecommunications market and the granting of licenses to provide telecommunications services, competition and its regulation mechanisms in this sector have not received the desired attention from the legislator and relevant authorities. This is due to the lack of explicit legislation or a comprehensive framework outlining the obligations of license holders regarding refraining from unlawful practices, especially non-price-related ones. Due to the monopolistic nature of licensed companies,

(1) In this sense: Dr. Adnan Baqi Latif, Legal Regulation of Competition and Prevention of Monopolistic Practices, 1st edition, Dar Al-Kutub Al-Qanuni, Egypt, 2012, p. 16.

they have significant power to control prices. And the resulting harmful effects include price increases, diminished service quality, and restricted competition. The only recourse to address this regulatory gap is the Iraqi Competition and Antitrust Law No. (14) of 2010, which undoubtedly contains general provisions regarding monopolistic practices in various economic activities. However, it fails to consider the specificity of competition and monopolies in the telecommunications sector, unlike some comparative laws and regulations that adopt a sound approach by providing this sector with specific laws and guidelines governing competition within it.

We chose to rely on Order 65, which constitutes the effective telecommunications legislation in Iraq, and the licensing agreements for telecommunications companies due to the absence of comprehensive legislation outlining these regulatory mechanisms. Additionally, we compared it with Jordanian legislation in this regard.

2- The importance

The importance of the topic comes from the significant increase in individuals' use of telecommunications services worldwide, to the extent that individuals cannot do without these services, which have a direct impact on obtaining other essential services for humans. This study gains its importance in that it contributes to reinforcing the competition framework and highlighting legislative and executive efforts to prevent monopolistic practices, thereby ensuring fair competition among all service providers in the telecommunications sector. All of this cannot be achieved without the existence of regulatory mechanisms that address any action that constitutes a breach of competition in the telecommunications market.

To further emphasize the importance and significance of the study topic, and to enrich the legal library with specialized research on the mechanisms for regulating anti-competitive practices in telecommunications in Iraqi and Jordanian comparative legislation, which have been scarcely touched upon by researchers.

3- Objectives:

The main objective of the study is to address the following topics and elucidate the stance of comparative legislation regarding them:

1 .Identifying the authorities responsible for regulating competition in the telecommunications market.
2. Explaining the types of mechanisms for regulating competition in the comparative telecommunications legislation.
3. Drawing conclusions that can be utilized by the legislative authority, competition protection agencies, as well as private sector projects operating in this field. Additionally, shedding light on consumer awareness.

4- Methodology:

Within the framework of this study, we have employed a comparative approach to elucidate the texts and methodologies adopted in the legislation of Iraq and Jordan. Since both legislations do not precisely regulate competition in the telecommunications sector, but rather grant authority to the Telecommunications Regulatory Commission to issue regulations or regulatory policies regarding this matter, we will refer to the competition protection regulations in the Jordanian telecommunications sector. Additionally, we will examine the effective telecommunications legislation in Iraq, represented by Order No. 65 of 2004 pertaining to the Iraqi Media and Communications Commission issued by the Interim Coalition Authority. Due to the absence of comprehensive competition regulation in the previous legislation, we have also relied on telecommunications licensing contracts to highlight the positions addressed regarding mechanisms in the telecommunications sector.

5- Study Structure:

This research entails examining the legal mechanisms for regulating competition, which we have divided into procedural and substantive aspects. In the procedural aspect, we delineate the methods of initiating lawsuits, the litigation procedures, and the enforcement of judgments. Additionally, in the substantive aspect, we address the issuance of necessary measures and penalties to ensure the effective implementation of competition rules in the telecommunications sector.
To achieve the study's objectives and verify its hypothesis, we divide it into two main sections. The first section is dedicated to elucidating the procedural regulation mechanisms, which we further divide into two sub-sections. The first sub-section delves into the regulation

mechanisms in Jordanian legislation, while the second sub-section focuses on the regulation mechanisms in Iraqi legislation .

Meanwhile, the second section is devoted to studying the substantive regulation mechanisms, also divided into two sub-sections. The first sub-section discusses precautionary measures, while the second sub-section explores criminal penalties. Finally, we conclude the study with the most significant conclusions drawn from our analysis.

I. Chapter one: Procedural Regulation Mechanisms

One of the established constitutional principles is that litigation is a preserved and guaranteed right for everyone.6[(1)] Thus, it is possible to file a lawsuit with the competent authority to claim rights. If the harm is of a public nature to the market, then each affected party has the right to bring their claim before the judiciary.7[(2)]

The competent authorities for examining practices that violate competition provisions in the telecommunications sector, in both comparative legislation and regulations issued under it, vary between competition protection councils and relevant administrative bodies responsible for regulating this sector. We were concerned about the overlap of jurisdictions among them, which raised the issue of duplicity in the procedures for handling claims arising from actual or potential violations of competition rules in this sector. In our next study, we will focus on the procedural methods for appeals and lawsuits before the competent authorities regulating competition in the telecommunications sector exclusively. These procedures include criminalizing practices that violate competition, as it is a specialized jurisdiction. The procedures established to enforce competition rules by competition protection councils, as they are the competent authority overseeing market protection across its various sectors from monopolistic practices, constitute a general jurisdiction.8[(3)]

(1) Clause (Third) of Article (19) of the Constitution of the Republic of Iraq for the year 2005.

(2) Joseph Nakhla Samaha, Unlawful Competition, 1st edition, Izz al-Din Printing and Publishing Establishment, Lebanon, 1991, p. 112.

(3) For details, see: Dr. Adnan Baqi Latif, Legal Regulation of Competition and Prevention of Monopolistic Practices (A Comparative Study), 1st edition, Dar Al-Kutub Al-Qanuni, Egypt, 2012, p. 377, et seq.

Procedural protection is based on the provisions found in the telecommunications laws, as well as what is included in the instructions or licenses issued by telecommunications regulatory authorities. Through these, a telecommunications company can offer its services to consumers. This protection is manifested in the presence of an effective mechanism for resolving disputes in the telecommunications sector. The absence of this mechanism delays the construction of a modern telecommunications network and consequently delays the provision of new telecommunications services.9[(1)]

This makes investors in the telecommunications sector hesitant to inject the necessary liquidity and investment. It restricts competition, giving dominance to certain entities in this sector, leading to higher prices and lower quality. Additionally, it undermines the confidence of beneficiaries in the regulatory role in the presence of monopolistic practices and significant economic power wielded by telecommunications companies. Lastly, it hinders the entry of new investors into the market. Therefore, we will divide this section into two parts: firstly, we will discuss the procedural regulation mechanisms in Jordanian legislation, and secondly, we will examine the procedural regulation mechanisms in Iraqi legislation.

I.1. Mechanisms of regulation in Jordanian legislation and the regulations issued thereof.

In accordance with the Jordanian Telecommunications Law, the responsibility falls upon the Telecommunications Regulatory Commission to ensure the provision of telecommunications and information technology services to beneficiaries equally and at reasonable prices, while achieving optimal performance for both sectors. In 2002, the independence of the Commission was strengthened through Temporary Law No. (8) of 2002, amending

(1) For more on this topic, see: Dr. Hisham Al-Tahat, on the mechanism for resolving telecommunications sector disputes in the Sultanate of Oman, a lecture available at the following electronic address:
<https:,,www.tra.gov.om,pdf,presentations,10-hisham.ppt> Last visited .(10/5/2021):

Telecommunications Law No. (13) of 1995, by restructuring the Commission and expanding its functions. (1)

Under the provisions of Telecommunications Law No. (13) of 1995 and its amendments, the management and supervision of the Commission are undertaken by a council called the "Board of Commissioners," composed of five full-time members appointed by a decision of the Council of Ministers upon the Prime Minister's nomination based on the recommendation of the Minister of Telecommunications and Information Technology. The Board of Commissioners of the Commission is empowered to exercise all necessary powers to enable the Commission to perform its tasks in accordance with the provisions of this law. Among the powers of the Board of Commissioners is to consider complaints submitted to the Commission by beneficiaries against licensees, as well as to consider complaints submitted by licensees and take necessary actions regarding them, except for disputes related to financial dues arising from the implementation of valid agreements.11(2) The Telecommunications

(1) Annual report issued by the Jordanian Telecommunications Regulatory Authority for the year 2014, p. 15.

(2)) Article (8) of the Law Amending the Jordanian Telecommunications Law No. (21 of 2011), published in the Official Gazette, dated 4/21/2011, is noted regarding the composition of the Board of Commissioners and the duration of their membership. Clauses (6), (7), (8), (11) of Paragraph (A) of Article (12) of the Jordanian Telecommunications Law, and the phrase (disputes related to financial entitlements resulting from the implementation of valid agreements) means all civil rights. And the disputed finances, Jordanian Legislation Bureau Decision No. (7) of 2006, regarding the interpretation of Clause (11) of Paragraph (A) of Article (12) and Article (60) of the Jordanian Telecommunications Law No. (13) of 1995, available at the electronic address following:
>http:,, homatalhaq.com >, last visited:(10/5/2021).

Regulatory Commission in Jordan has issued instructions for resolving disputes between licensees under its supervision.12[1] These instructions are applied to resolve disputes arising between licensees, following the procedures outlined in these instructions. [2] Although the Telecommunications Regulatory Commission does not have the authority to adjudicate or settle civil or financial disputes or to award compensation to eligible parties when considering and deciding on complaints submitted to it by beneficiaries or licensees providing telecommunications services. [3] However, among the disputes that arise between licensees and are considered by the Commission are disputes resulting from practices violating competition as stipulated in the law and described in the Competition Protection Instructions or in the licenses issued by the Commission. Additionally, disputes related to technical, operational, commercial, and legal matters of interconnection

(1) Issued pursuant to the provisions of Article (6) and Clauses (2) and (11) of Paragraph (A) of Article (12) and Article (60) of the Telecommunications Law No. (13) of 1995 and its amendments, and by decision of the Authority's Board of Commissioners No. 13, 3, dated : 2/15/2007, available at the Jordanian Telecommunications Regulatory Authority's electronic address, last visited: (9/15/2016). Disputes mean: disputes that arise between licensees due to a violation of the Telecommunications Law or the regulations issued pursuant to it or the instructions or decisions issued by The Authority or the conditions of licenses, agreements, or contracts concluded between licensees that require obtaining the Authority's approval, notes Article (2) of the Jordanian Dispute Resolution Instructions.

(2) It is noted within the scope of application of these instructions: Article (3) of the instructions for resolving disputes between licensees at the Jordanian Telecommunications Regulatory Authority.

(3) Jordanian Legislation Bureau Resolution No. (7) of 2006.

are considered, taking into account the provisions of the Interconnection Instructions. (1)

Also, the resolution of these disputes, according to the Dispute Resolution Instructions between licensees, is carried out through a process where a complaint dossier is submitted, accompanied by supporting evidence, along with an inventory of the contents of this dossier.16(2) Upon receipt of the complaint, it is referred to the Board of Commissioners of the Commission, which appoints one of its members in writing to undertake the dispute resolution procedures concerning the subject of the complaint, taking into account the nature of the dispute and the subject of the complaint.17(3)

The designated commissioner, for the purpose of resolving the complaint, is responsible for all necessary tasks, including investigative procedures (such as gathering necessary information related to the subject of the complaint from the directorates of the commission and all relevant parties, requesting any additional data or documents from both parties to the complaint deemed necessary for the resolution, supervising the preparation of correspondence to be communicated by the commission in implementation of the procedures outlined in these instructions). (4) The Jordanian Telecommunications Law considers the

(1) Article (3) of the Instructions for Resolving Disputes between Licensees at the Telecommunications Regulatory Authority.

(2) For more information about submitting a list of complaints, please note: Article (6) of the Instructions for Resolving Disputes between Licensees to the Telecommunications Regulatory Authority, and in the conditions for submitting a complaint, Article (7) of the same instructions, and the decision issued by the competent commissioner to consider and decide on the complaint submitted by Petra Jordanian Mobile Telecommunications Company, Orange Mobile, against the Jordanian Mobile Telephone Services Company (Zain), subject to: The defendant (the Jordanian Mobile Telephone Services Company) exploiting its dominant position in the market and engaging in anti-competitive practices, dated 1/31/2010, and published on the Authority's electronic address. , previous source, Last visited: (9/16/2016(

(3)Article (10) of the instructions for resolving disputes between licensees at the Jordanian Telecommunications Regulatory Authority.

(4) Article (19) of the instructions for resolving disputes between licensees at the Jordanian Telecommunications Regulatory Authority.

employees of the regulatory authority appointed to enforce violations as judicial enforcement officers. They operate with regulatory enforcement reports prepared by them until proven otherwise, provided they adhere to the conditions of enforcement stipulated in the Criminal Procedure Code. Civil and military authorities and public security forces are required to provide the authority's employees with all possible assistance to carry out their duties in enforcing violations. The authority's employees are authorized to regulate enforcement reports on violations and seize unlicensed devices and equipment, or those used contrary to the provisions of the law. (1) As a sectoral regulatory authority, the Jordanian Telecommunications Regulatory Commission has the right to initiate cases related to unfair competition and anticompetitive practices based on a complaint submitted to the public prosecutor.20(2) The Dispute Resolution Instructions between Licensees also indicate that the intervention of the authority should be based on a complaint. (3)

You're correct, the previous texts did not mention the automatic intervention of the authority in case of suspected anticompetitive practices.

As for the mechanism for resolving these disputes in Jordan22(4) The authorized commissioner is given the authority to choose one of two methods to resolve the dispute: either to adjudicate the complaint according to the procedures outlined in these instructions, or to resort to alternative means by inviting the parties to the complaint to meetings for the purpose of setting negotiation guidelines or attempting to settle the dispute between them.23(5) In the latter case, the commissioner specifies a period for settling the dispute, not exceeding (15) working days. If a settlement is reached, the authorized commissioner must

(1) Articles (62), (63), and (64) of the Jordanian Telecommunications Law.
(2) Article (17) of the Jordanian Competition Law.
us instructions.
(3) Articles (6) and (7) of the instructions for resolving disputes between licensees at the Telecommunications Regulatory Authority
(4) For more information about the dispute resolution mechanism, Dr. Moataz Sayed Muhammad Ahmed Afifi, New Means of Resolving Telecommunications Disputes, a study available on the website, https://academia-arabia.com, 7/7/2023.
(5) Paragraph (a) of Article (18) of the same previous instructions

inform the council in writing of its content, along with his recommendation regarding it. The council shall approve it if it does not conflict with the law or the public interest of the sector, provided that the council issues its decision in this regard within (15) working days from the date of the meeting at which it was informed of the settlement content by the authorized commissioner. If the parties to the complaint fail to reach a settlement within the period specified by the authorized commissioner for this purpose, or if the council does not approve it, the authorized commissioner shall resume his proceedings to adjudicate the dispute. [(1)] In any case, the resolution of the complaint must be made within (6) months from the expiry date of the deadlines for submitting the complaints specified in the provisions of the second chapter of these regulations. If the need arises to extend the period, the authorized commissioner or the council may extend this period, provided that the decision to extend is justified. The authorized commissioner, for the purpose of resolving the dispute, may gather information from the directorates of the authority and all relevant parties, and may request additional information or documents from the parties.[(2)] As stipulated in these regulations, a committee shall be formed to assist the authorized commissioner in the dispute resolution proceedings if deemed necessary, based on the recommendation of the authorized

(1) Article (18) of the same instructions.

(2) Articles (19 - 39) of the Instructions for Resolving Disputes between Licensees to the Telecommunications Regulatory Authority, and the authorization of the competent commissioner shall be in accordance with the provisions of Article (60) of the Telecommunications Law No. (13) of 1995, and in accordance with the provisions of Paragraph (B) of Article (60) mentioned, which states that "the competent commissioner shall carry out the settlement or establish guidelines for negotiations between the parties or decide the dispute personally or through a person or persons appointed for this purpose" - and notes the decision issued by the competent commissioner to consider and decide on the complaint submitted by the Petra Company. Jordanian Mobile Telecommunications Company (Orange Mobile) against the Jordanian Mobile Telephone Services Company (Zain), the subject of which is: the defendant (the Jordanian Mobile Telephone Services Company) exploiting its dominant position in the market and engaging in anti-competitive practices, dated 1/31/2010, and published at the address Jordan Telecommunications Authority website. Last visited: (9/16/2022), p. 4.

commissioner, with a maximum of (5) members. The committee shall study the case and provide opinions on the matters assigned to it by the commissioner. The authorized commissioner may seek the assistance of experts and advisors and may seek the opinion of any public official institution concerned with competition matters in the kingdom in accordance with the laws.26[1] It is noted that the authorized commissioner seeks the opinion of the last party for reference purposes only, and is not obliged to follow it. During the dispute resolution process, proceedings may be suspended if the parties agree to settle the dispute. It is the responsibility of the authorized commissioner to notify the authority of this so that the latter can take appropriate action.27[2] The decision of the commissioner must be implemented immediately upon issuance, and both parties must be notified in writing. As for appealing the decision, it can be contested within (30) days from the date of notification, and once this period ends, the decision becomes final. Decisions issued by the authorized commissioner or the council, as appropriate, are published on the authority's website.28[3] It's worth mentioning that Article (38) of the regulations mentioned arbitration as a means that the council may resort to in exceptional circumstances, based on the recommendation of the authorized commissioner after studying the submitted regulations, taking into account the provisions of the interconnection regulations. This is conditional upon neither party having dominance in the market, and after ensuring that this does not affect the public interest of the sector or the application of public policy. We see the validity of this article's stance on arbitration due to its positive aspects. It has become one of the most important means of settling disputes, providing assurance to foreigners of not being subject to a specific jurisdiction and ensuring individuals within the state against delays and lack of confidentiality in dispute resolution.

(1) Note Articles (20), (21), and (25) of the instructions for resolving disputes between licensees at the Telecommunications Regulatory Authority.
(2) Article (26) of the same previous instructions.
(3) Articles (27), (28), (29), and (43) of the same instructions.

Additionally, arbitration has characteristics that cannot be found in the judicial system, such as29[1]:

1 -Reducing expenses and saving time.

2 -Facilitating the parties to the dispute by alleviating the burden associated with litigating before the judiciary.

3 -Resolving conflicts arising from conflicting laws and jurisdictional issues.

4- The parties' desire to submit the dispute to knowledgeable and experienced individuals in the field of e-commerce, both legally and technically.30[2]

I.2. discusses the regulatory mechanisms in Iraqi legislation and the regulations issued pursuant to it:

The Iraqi Communications and Media Commission (CMC) is the sole authority responsible for granting licenses in the fields of telecommunications, broadcasting, and information services throughout Iraq. The Commission has granted several licenses in both the telecommunications and broadcasting sectors.31[3] The Order 65 of 2004 includes provisions aimed at protecting competition in the telecommunications sector.32[4] Article 3 of the first section of this order stipulates the establishment of a framework for all service providers to ensure full and fair competition among them. Additionally, the authority is granted to the regulatory body to impose appropriate

(1) Suzan Ghazi Mustafa, Resolving disputes in technology supply contracts through arbitration, Master's thesis submitted to the Council of the Faculty of Law, Middle East University, Jordan, 2009, p. 13.

(2) For more on the importance of arbitration, see: Dr. Wafaa Mazyad Falahout, Legal Problems in Technology Transfer Contracts to Developing Countries, 1st edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2008, pp. 726 et seq., and notes: Dr. Asaad Fadel Mandil Al-Jayashi, The Legal System for Electronic Arbitration, p. 2, research available at the electronic address: >http:,,profasaad.info,?pageid>, last visited: .(9/7/2022).

(3) Communications and Media Commission, State of the Communications Sector in Iraq 2006, previous source, p. 15.

(4) It is noted in this regard: Paragraph (1) of Article (3) of Appendix (A) of the Regulations for Personal Mobile Communications via Satellite (GMPCS) Licensing, previous source, p. 11.

penalties to ensure compliance with licensing conditions, professional practice codes, and other rules and regulations.33 [(1)]Indeed, the last phrase encompasses the authority of the regulatory body to penalize and prohibit practices that are detrimental to competition. This includes the power of the regulatory body to impose sanctions on telecommunications companies (those licensed) if they engage in any practices that impede or undermine competition in the telecommunications sector.34[(2)]

Regarding dispute resolution and complaints, we note that the regulatory body has a hearing committee composed of five members with backgrounds in the legal profession or relevant fields. This committee has the authority to hear cases involving serious violations of professional codes of conduct, ethical behavior, and licenses. In cases of continued or repeated violations, it can make decisions based on complaints from the Director-General of the regulatory body, who

(1)) It is noted in this phrase: Section (17) of the Cellular Telecommunications Services Licensing Agreement, between the Iraqi Communications and Media Commission and Asia Cell Company, and one of the conditions of the license is that the licensee shall not perform, whether alone or with others, whether explicitly or implicitly, Any anti-competitive practices. It dealt with Article (8) of the Personal Mobile Communications via Satellite (GMPCS) Licensing Regulations, previous source, p. 8, and Article (9) of the Internet Services (ISP) Regulations, previous source, p. 9, and Article (9) of Satellite Stations Licensing. (VSAT), previous source, p. 9, several powers granted to the Authority. In the event of a violation, breach, or neglect of the license or other laws, regulations, and communications instructions, without prejudice to the Authority's authority to cancel the license, the Authority has the right to take any action and - or impose any penalty. Or a fine authorized by telecommunications legislation, and it has the right to force the licensee to comply with the controls and instructions it issues in a manner consistent with the public interest and the interest of the consumer. We note the decision issued by the Appeal Board of the Iraqi Media and Communications Commission, Issue No. 17, Appeal, 2013, dated: 10/20/2013, published on the electronic address of the Iraqi Media and Communications Commission, a previous source, last visited: (12/7/2022).

(2) In accordance with Article (1) of Section Nine of Order (65) of 2004.

serves as the head of its executive branch.35[1] The Board of Commissioners also establishes criteria used to determine any violation of media licensing conditions or any other regulations set by the regulatory body. These criteria authorize the Director-General or the hearing committee to issue a decision regarding the occurrence of a violation. The hearing committee, meanwhile, deals with matters beyond the severity of a violation.36[2] The Director-General also reviews the facts of the case, in cases under his authority, and may request additional information from the concerned broadcasting, telecommunications, or information technology service providers if

(1) Note: Paragraph (A) of Article (3) of Section (4), and Article (3) of Section (8) of Order No. (65), and review the decisions of the Hearing Committee of the Media and Communications Commission, the website. To the Communications and Media Commission, previous source, date of previous visit.

(2) Article (1) of Section (8) of Order (65) is noted. In other cases, or in the event of continuation or recurrence of violations, the Hearing Committee shall decide whether or not the violation occurred, as follows:

A- The Director General submits the complaint to the Hearing Committee. The broadcasting and transmission service provider, telecommunications service provider or information service provider concerned shall be given a full and adequate opportunity to respond to the complaint؛

B- The Hearing Committee issues its decision on the subject of the complaint after listening to the arguments and evidentiary evidence presented to it. The committee's decision is submitted to the Director General for implementation. The Hearing Committee's decision must be issued in writing and must determine whether or not the breach or violation occurred. It must also assess the extent of the harm that resulted from the occurrence of the violation and the severity of the violation that led to the harm, where appropriate. It must also state in the decision whether circumstances exist. Or factors mitigating or aggravating the severity of the breach or violation, it shall be noted. Article (3) of Section (8) of Order (65), and Article (4) of the same section of the same Order stipulates that: - In the event that there are reasons that lead the Director-General to believe that an operation constitutes a threat to public safety or order, it is permissible to He may act immediately to suspend this process, until the Hearing Committee expedites its review of the matter.

necessary. The Director-General then issues his decision based on the evidentiary facts, including his analysis of whether any breach or violation occurred, the extent of the damage resulting from such breach or violation, the severity of the violation, and whether there are any mitigating or aggravating circumstances that affect the seriousness of the act.37 [1]

As for appealing against the decisions of the authority, any individual who considers themselves aggrieved by a regulation, rule, professional code, or decision issued by the authority has the right to appeal against it. They can submit an appeal request to the Appeals Board.38[2] Under the provisions outlined in Section Eight of Order 65, individuals have the right to appeal against regulations, rules, professional codes, or decisions made by the authority. 39[3] Whether those decisions were issued by the Director-General or by the Hearing Committee, the appeal against the Commission's decision must be submitted within 30 days from the date of its issuance.40 [4]Any party wishing to oppose or comment on the appeal request must do so within 15 days from the date of submission. After this period, the Appeals Board may hold a hearing session or request the parties to submit

(1) Note Article (2) of Section (8) of Order (65).

(2) Paragraph (b) of Article (4) of Section (4) of Order (65) stipulates that "The Appeal Board shall consist of a judge and a lawyer with experience in the field of telecommunications regulation, and a member with professional or commercial experience in the legal profession or in one of the Areas closely related to this profession. The Appeals Board elects one of its members as president.

(3) Note Article (8) of Section (8) of Order (65)

(4) Regarding the appeal against the decision of the Hearing Committee and the dropping of this decision by the Appeal Committee, it is noted: The decision issued by the Appeal Committee of the Iraqi Media and Communications Commission (regarding the contested decision) Hearing Committee Decision No. (8) Hearing, 2011 on 8/10/2011, The Issue No. 35, Appeal, 2011, dated: 1/24/2012, and regarding the Appeal Committee's support of the Hearing Committee's decision, it is noted: Decision No. (38, 39), Appeal, 2011, dated: 1/24/2012, published on the electronic address of the Authority. Media and Communications, previous source, Last visited: (7/8 /2022)

documents and statements in writing. The Appeals Board must then issue its decision on the appeal within a period of 30 days from the date of the first hearing session or from the date of submission of written documents and statements. The decision of the Appeals Committee shall be final.41[1]

In the same context, the licensing agreement between AsiaCell and the Iraqi Communications and Media Commission includes one of the means to protect competition in the telecommunications sector. It states that disputes between the licensee and any subscriber, or between the licensee and another authorized service provider, shall be considered and resolved.42[2]

According to the following procedures:

1 .Disputes are resolved directly by the parties involved (alternative dispute resolution.43[3]

2. If the parties involved fail to resolve the dispute amicably through private negotiations, each party has the option to refer the dispute to the Communications and Media Commission for evaluation, investigation, and resolution. The decision of the Commission and any orders issued by it are binding on the parties involved.44[4]

It would have been preferable for the decision of the authority to be subject to appeal before competent bodies, such as the Appeals Board

(1) Article (5) of Section (8) of Order No. (65), and in this regard, review the decision issued by the Appeal Board of the Media and Communications Authority, No. 15, Appeal, 2015, dated: 25/6/2015, published at the electronic address of the Authority. Media and Communications, previous source, same date of visit.

(2) Authorized telecommunications services provider: means any licensed telecommunications services provider, or the Iraqi Ministry of Communications, Paragraph (c) of Section (1) of the Cellular Telecommunications Services Licensing Agreement, between the Iraqi Media and Communications Commission and Asia Cell Company.

(3) Clause (1) of Paragraph (A) of Section (29) of the Asia Cell Cellular Telecommunications Services Licensing Agreement, and also notes: Sarbast Qadir Hussein, Anticompetitive Practices in the Telecommunications Sector, Master's Thesis Submitted to the Council of the College of Law and Politics, Salah University Al-Din, Erbil, 2013, p. 125, footnote No. (6).

(4) Clause (2) of Paragraph (A) of Section (29) of the Cellular Telecommunications Services Licensing Agreement between the Iraqi Communications and Media Commission and Asia Cell Company .

within the authority, for ensuring the validity of the procedures and decisions issued by the authority. On the other hand, the provision for alternative means, as in the Jordanian Dispute Resolution Instructions, is commendable, provided that a timeframe for amicable dispute settlement is specified to avoid delays in resolving the dispute through other means, along with the associated expenses, etc. On the other hand, it is not appropriate to impose these measures on the parties to the dispute (compulsorily), as this would contradict the Iraqi Constitution, which enshrines resorting to the judiciary as a stable constitutional principle and a preserved and guaranteed right for all.45[1]

Regarding disputes between the licensee and the licensor regarding the interpretation, implementation, or application of the licensing agreement, the following procedures are followed:

1 .The dispute shall be resolved amicably through negotiations, with both parties exerting their utmost efforts to resolve the dispute.
2. If the parties are unable to resolve the dispute through direct negotiation, they may refer the dispute to the dispute resolution body affiliated with the licensor.46[2]
3. If the dispute resolution body affiliated with the licensor is unable to reach a decision, or if one of the parties wishes to appeal the decision of the mentioned body, and the appellate body has not yet been formed or is unable to make any decision regarding the dispute, or if the parties agree to it, the dispute may be referred to arbitration, binding on both parties according to the arbitration rules issued by the International Chamber of Commerce.47 [3]And we see that the last resort is an

(1) Clause (Third) of Article (19) of the Constitution of the Republic of Iraq for the year 2005
(2) Clauses (1) and (2) of Paragraph (B) of Section (29) of the Cellular Telecommunications Services Licensing Agreement, between the Iraqi Media and Communications Commission and Asia Cell Company, notes Sarbast Qadir Hussein, a previous source, p. 125.
(3) For more information about the location of the arbitration panel, the mechanism by which it is formed, and its decisions, note: Clause (3) of Paragraph (B) of Section (29) of the Cellular Telecommunications Services Licensing Agreement, between the Iraqi Media and Communications Commission and Asia Cell.

effective means to resolve disputes between parties and is capable of safeguarding competition if it is included.48[1]

We see that the last resort is a successful means of resolving disputes between parties and is effective in safeguarding competition if it addresses disputes related to anti-competitive practices, provided that it is not imposed mandatorily on the parties to the dispute.

From the above, it becomes clear to us that the previous texts addressed a means of protecting competition through the mechanism of dispute resolution, which includes disputes that may arise from a complaint from one telecommunications company against another regarding anti-competitive practices issued by a telecommunications service provider in the market. This is concerning disputes between licensees or between them and subscribers. As for disputes between the licensor and the licensee regarding the implementation of the licensing agreement, as we have previously indicated, one of the obligations of the licensing agreement is: the licensee, whether individually or jointly with others, explicitly or implicitly, must refrain from engaging in, or acquiescing to, any non-competitive practices.48 The licensee may engage in non-competitive practices that fall within the scope of the mentioned prohibition, leading to a dispute between them and the licensor regarding the implementation of the licensing agreement. In such cases, recourse can be made to the mechanisms and procedures established for resolving such disputes, as outlined in paragraph (b) of section 29 of the Mobile Telecommunications Services Licensing Agreement between the Iraqi Communications and Media Commission and Asia Cell, if Asia Cell is a party to the dispute .

The regulatory provisions governing the licenses for Personal Mobile Satellite Communications Services (GMPCS) have been referred to Order 65, which stipulates that all disputes, exclusively, fall under the authority of the Communications and Media Commission as stated in the Order 49[2]. Therefore, these mechanisms can be

(1) Notes: Section (17) of the Cellular Telecommunications Services Licensing Agreement between the Iraqi Communications and Media Commission and Asia Cell.

(2) It is noted: Article (11) of the Regulations for Licensing Providers of Personal Mobile Communications via Satellite (GMPCS) and its corresponding Article (13) of the Regulations for Licensing Providers of Internet Services Providers (ISP), and Article (13) of Licenses for Satellite Stations (VSAT)

considered effective means of protecting competition in the telecommunications sector. Furthermore, the mentioned agreement in section 29 addresses remedial measures, whereby both parties agree to allow the licensee to impose them in case of proven breaches by the licensor of the licensing agreement or applicable laws, regulations, and instructions.50[1] As a deterrent for repeated or ongoing violations of the licensing agreement, applicable laws, or regulations enforced accordingly, the licensee agrees to implement corrective or executive measures, or to litigate or enforce them as necessary, to ensure compliance with the terms of the licensing agreement. These measures are necessary to achieve the public interest.51[2]

It's evident from the that Order 65 of 2004 issued by the Transitional Coalition Authority, as well as the licenses issued by the Iraqi Communications and Media Commission, have granted the latter extensive powers to impose penalties on companies providing communication services. This is to ensure their good conduct and compliance with laws and regulations. The structure of the commission, its responsibilities, including the authority to hear cases of serious violations of professional codes of conduct and ethics, as well as licensing, and the power to impose decisions, all contribute to ensuring competition protection in the field of communications. The ability to appeal against the decisions of the commission further enhances this protection, provided that the commission effectively utilizes its granted powers and benefits from the expertise of its members, both legally and administratively.52[3] Activating its role in imposing penalties is crucial because the failure of the Iraqi

(1) Paragraph (c) of Section (27) of the aforementioned agreement.

(2) Paragraphs (a) and (b) of Section (27) of the same agreement, and among these measures are: (general warning orders issued by the licensor, demands to apologize to the general public, general warning orders issued by the licensor, which include a general warning stating that the period of The license agreement, or its termination or cancellation, or the suspension of rights resulting from the agreement, unless breaches or violations are addressed within a specific period, the issuance of prohibition decisions or claims regarding performance, the imposition of fines, penalties, or equivalent compensatory damages payable by the licensee or his sponsor. Any other corrective or executive powers that may be provided to the licensor by applicable law.

(3) Note Paragraph (d) of Article (1) of Section (4) of Order (65)

Communications and Media Commission to monitor the performance of the private sector, especially mobile phone companies, poses one of the most significant challenges to the telecommunications sector.53 [1]Activating this role would help to assess the behavior of companies if they deviate from the right path or engage in anti-competitive practices. One of the means to achieve these results is issuing directives for each of the main activities practiced by the licensee, such as competition protection directives, interconnection directives, dispute resolution directives, and so on.54[2] This demonstrates the active role played by the Telecommunications and Media Authority in protecting competition in the telecommunications sector.

So, the Iraqi legislator and the Iraqi Telecommunications and Media Authority addressed the issue of regulatory mechanisms through scattered provisions in the field of telecommunications services, as reflected in Order 65 and licenses. In cases where there is no specific provision, which necessitates recourse to competition law, authority was granted to the Competition Council under the provisions of the Competition Law of 2010 to address practices that restrict competition and agreements.55[3] And Issuing guidelines to facilitate the implementation of the law.56[4] On the other hand, efforts were made to provide this authority with all the necessary guarantees to ensure its intervention when necessary, and in the most optimal manner. The structure of the council itself is one of these guarantees, as the legislator took care to create a harmonious composition comprising members with diverse expertise.57[5] What surpasses its importance are the procedural provisions related to the council's exercise of these competencies, as well as the authority granted to the council and its

(1) Transport and Communications Promotion Strategy, previous source, p. 30.
(2) Muhammad Al-Ta'ani, The role of the Telecommunications Regulatory Authority in promoting integrity in the business environment in Jordan, research available at the electronic address of the Jordanian Telecommunications Regulatory Authority, previous source, p. 4.
(3) Notes Articles (9-12) of the Iraqi Competition Law.
(4) Note Article (14) of the aforementioned law.
(5) For details on these powers, see the text of the second clause of Article (4) of the Iraqi Competition Law.

committees, outlined in Article 7 of the Iraqi Competition Law.58[1] And the Competition Council intervenes in three aspects. 59[2] Either on its own initiative, or based on a complaint, or upon request from the court. 60[3] The Council can initiate a case autonomously if it sees it falling within its jurisdiction.61[4]

The council can initiate a case autonomously without the need for a claim from any of the parties mentioned in the same article. However, the question that may arise in this regard is how the council can become aware of the violation. To answer this, it can be said that the Competition Law did not specify this method. However, there are various ways through which the council can become aware of the violation. For instance, if the council is notified of anti-competitive practices by a party lacking standing and interest, such notification may be rejected, but upon further examination of the facts, it becomes evident that monitoring such practices is necessary to protect the public economic order. In such a case, the council may initiate automatic notification. Another scenario is when the council receives a notification and it becomes apparent from the facts the need to expand the scope of investigation to adjacent markets. In this case, the council initiates automatic notification and undertakes the study of the case.

(1) It reads: The Competition and Monopoly Affairs Council shall undertake the following tasks:
First: Preparing the general plan for competition and preventing monopoly and draft legislation related to competition and preventing monopoly with the relevant authorities. Second: Working to spread the culture of competition and prevent monopoly, protect and encourage it.
-Third: Investigating information and practices that violate the rules of competition and preventing monopoly in cooperation with the relevant authorities in accordance with the provisions of legislation. Fourth: Conducting investigations into the practices it uncovers or based on the complaints and information it receives or those assigned to it by the court, and preparing reports on its results.
(2) Clause (Fourth) of Article (7) of the Iraqi Competition Law.
(3) It is noted in this regard: Issa Ammoura, The Legal System for Competition Council Disputes, Master's Thesis in Law Submitted to the Council of the Faculty of Law, University of Tizi Ouzou, Algeria, 2007, p. 36.
(4) For more notes: United Nations Conference on Trade and Development, The Role of Competition Policies in Promoting Economic Development, Designing Competition Laws and Policies Appropriately and Their Effectiveness, Memorandum submitted by the UNCTAD Secretariat, 2010, p. 7.

62[1] And this pertains to how the Competition Council exercises its right to autonomous intervention, a practice that is commendable.

II. Chapter Two: Objective Regulatory Mechanisms

Objective protection is manifested through criminal and civil protection. The former includes financial penalties and others involving the deprivation of liberty, which may be preceded by precautionary measures. The latter generally revolves around compensation. If the recognition of compensation falls within the jurisdiction of the judiciary and specialized courts as outlined, then financial penalties and penalties involving the deprivation of liberty are shared between the judiciary, telecommunications authorities, and competition protection councils. Therefore, we will address precautionary measures in the first request and criminal penalties in the second request.

II.1. Precautionary Measures

One of the precautionary measures imposed on practices that violate competition in telecommunications is the prohibition of activity. Article (28) of the Jordanian Telecommunications Law grants the Council of the Telecommunications Regulatory Commission the authority to exclude any licensee if it deems their participation in competition for new licenses could lead to a non-competitive situation in the market. 63[2] As for the prohibition of engaging in activities...

Order No. (65) granted the Iraqi Communications and Media Commission the authority to apply and impose appropriate penalties on licensees in case of violation and non-compliance with the licensing conditions, provisions, codes of professional conduct, as well as other rules and regulations. These penalties include issuing warnings, requesting the publication of apologies, suspending licenses, suspending operations, halting operations, terminating or revoking

(1) Bou Jamil Adel, the responsibility of economic aid for practices restricting competition in Algerian law, a master's thesis submitted to the Council of the Faculty of Law and Political Sciences, Mouloud Mammeri University, Tizi-Ouzou, 2012, p. 110.

(2) Article (28) of the Jordanian Telecommunications Law.

licenses.64[1] The Commission has the authority to suspend the license entirely or partially based on the licenses issued by it.65 [2]The licensee must comply with the penalty imposed by the authority.66[3]

From the above, we notice that the Jordanian Telecommunications Law and the instructions issued under it do not specify the penalties imposed on practices that violate competition in the telecommunications sector.67[4] The Jordanian Telecommunications Law, after granting the authority to the regulatory body to issue regulations and instructions, which in turn issued instructions regarding competition in the

(1) Article (1) of Section Nine of Order (65). One of the conditions of the license is that the licensee, whether alone or with others, whether explicitly or implicitly, does not engage in any anti-competitive practices. Section (17) of the cell phone communications services licensing agreement between the Iraqi Media and Communications Commission and Asia Cell Company is noted, and in this context it is noted the (unpublished) decision issued by the General Directorate of Posts and Telecommunications in the Kurdistan Region of Iraq, regarding the termination of the Ashur Company license contract. Erbil, 4/16/2015. In this regard, it is noted in this regard the decision of the Director General of the Iraqi Media and Communications Commission No. (3433), dated 9/16/2010, to withdraw the frequencies allocated to Media Telecom (Fanous) in the governorates where the (WiMax) service has not spread within the period stipulated in the licensing contract. Because the company was unable to use these frequencies in these areas for reasons beyond its control, the Authority's Appeal Board decided, in Appeal No. 28/6 dated 5/24/2011, to drop this decision and give the company a period not exceeding 3 months after which it has the right to withdraw The granted frequencies, the decision and the appeal are available at the Authority's electronic address. Previous source, Last visited. (10/10 /2022).

(2) Note in this regard is the decision of the Executive Director General of the Iraqi Media and Communications Commission No. (1060), dated 3/15/2010, to suspend the license granted to Iraq Tel Company. The decision is available at the Commission's electronic address, previous source, Last visited. (5/10) / 2022.

(3) Article (8) of the Regulations for Licensing Providers of Personal Mobile Communications via Satellite (GMPCS), previous source, p. 8, and Article (9) of the Regulations for Licensing Providers of Internet Service Providers (ISP), previous source, p. 9, and Article (9).) of satellite station licenses (VSAT), previous source, p. 9, and notes the decision issued by the Appeal Board of the Iraqi Media and Communications Commission, No. 17, Appeal, 2013, dated: 10/20/2013, published on the electronic address of the Iraqi Media and Communications Commission. Previous source: Last visited (5/8/2022), regarding these measures in Iraqi Kurdistan, review Article (20) of the LTE license contract granted to Ashur Company.

(4) Rather, its text on these penalties relates to other matters, such as intentionally or negligently sabotaging telecommunications facilities or equipment or causing damage to these facilities, sending threatening or insulting messages or immoral messages, transmitting news with the intention of causing panic, or creating or operating Or managing a public or private telecommunications network in violation of the provisions of this law and others. Note: Chapter (11) (Crimes and Punishments) of the Jordanian Telecommunications Law.

telecommunications sector, did not specify penalties for practices violating competition in the telecommunications sector. Instead, it addressed the forms of practices that violate competition.68[1] So, the Jordanian Telecommunications Law and the instructions for competition protection left the matter of penalties for other practices violating competition in this sector to those stipulated in the Jordanian Competition Law. Its provisions apply to all production, trade, and service activities contrary to what was stipulated in the interconnection.69[2] Indeed, the fact that the Jordanian Telecommunications Law only specifies penalties for violations related to interconnection agreements without addressing other practices violating competition suggests that the failure to comply with or refusal to engage in interconnection is considered a technical matter unique to the telecommunications sector.

II.2. Criminal Penalties

Criminal penalties are divided into fines and imprisonment. Concerning the first type of penalties, practices that violate competition laws are often associated with hefty financial penalties. This is primarily because many of these practices are motivated by greed and unlawful profit. Consequently, legislation often resorts to applying the principle of pecuniary punishment to combat and deter these behaviors. Imposing significant financial penalties on offenders helps ensure the necessary respect for economic laws, deters potential offenders, and discourages the commission of such practices.70[3] Fines, in their various forms and circumstances, serve as a punishment intended to affect the psyche of the offender by inflicting deliberate financial hardship. The aim is to deplete the financial resources of the offender. Since fines are not meant to compensate but rather to penalize, legislators often resort to a relative assessment of fines, particularly in

(1) which we discussed in detail in the second chapter of our book, Protecting Competition in the Telecommunications Sector, previous source, p. 110 et seq.

(2) Note for detail Article (3) of the Jordanian Competition Law.

(3) Muhammad Khemikham, The Special Nature of Economic Crime in Algerian Legislation, Master's Thesis. University of Algiers, 2010 - 2011, p. 72.

economic crimes. This approach is more impactful and closer to achieving justice.71[1]

According to competition authorities, financial penalties have a dual nature, serving both punitive and preventive purposes. Therefore, the penalty must be sufficiently deterrent. Its amount should exceed the profits gained from the unlawful practices or those expected through such practices. Economic analyses conducted by competition authorities have shown that the economic gains obtained by companies from their anticompetitive behavior are substantial on one hand, while on the other hand, financial penalties are only effective if their amount is proportional to the assumed value of the profits that would be obtained.72 [2]In the field of comparative laws and the regulations issued accordingly, the Jordanian telecommunications legislation stipulates fines for engaging in interconnection practices (without justification).73 [3]The punishment may entail imprisonment for a period not less than one month and not exceeding six months, or a fine ranging from not less than 2000 Jordanian dinars to not more than 5000 Jordanian dinars, or both of these penalties. Thus, the possibility of combining imprisonment and fine is allowed.

As for other anti-competitive practices, they fall under the provisions of the Jordanian Competition Law. According to this law, the penalty for violating Articles 5 and 6 related to anti-competitive practices is a fine ranging from not less than 1% to not more than 5% of the total annual sales of goods and revenues from services of the violator, or a fine ranging from not less than 5000 Jordanian dinars to not more than 50000 Jordanian dinars if the value of sales or revenues is not specified.74 [4]They are also punished with a fine of not less than 200 Jordanian dinars and not more than 20,000 Jordanian dinars, anyone who directly or indirectly imposes a minimum resale price for a product or service, or imposes on another party or obtains from them prices or special buying or selling conditions unjustifiably in a manner

(1) Muhammad Khumaykhum, previous source, same reference.
(2) Jalal Massad, Mahtout's wife, "The extent to which free competition is affected by commercial practices," thesis for a doctoral degree in law, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, Algeria, 2012, p. 90.
(3) Article (79) of the Jordanian Telecommunications Law.
(4) Article (20) of the previous law

that gives them an advantage in competition, or sells a product in its original condition at a price lower than its actual purchase price plus taxes and fees imposed on the product and transportation expenses, if the purpose of such action is to disrupt competition.75 [1].

In determining the fines imposed under the provisions of the Jordanian Competition Law, consideration is given to the benefit gained by the violating party and the amount of damage inflicted on others. Furthermore, the court has the authority to mitigate the fine imposed on any violator in accordance with Articles (5), (9), and (10) of this law if they provide the Competition Directorate with information leading to the discovery of such violations.76 [2]This approach seems appropriate in our view. As for the authority of the regulatory body to impose fines under the license, the latter is responsible for monitoring the licensee's compliance with the terms of the license. Accordingly, it should take appropriate measures to ensure the licensee's compliance with the provisions of the license, the telecommunications law, the executive regulations, and the effective regulatory framework. In case of failure by the licensee to comply with any of these provisions, they may be subject to fines ranging from (50,000 to 200,000) at most, payable according to the procedures determined by the regulatory body. The fine may be doubled in cases of repeated violations, non-compliance within the specified period, or if the regulatory body determines that the violation is substantial. If the licensee fails to pay the fine within 30 days of receiving the fine notice, an additional monthly fine may be imposed.77[3].

As for the penalties mentioned in Section 9 of Order 65 issued by the Iraqi Media and Communications Commission, Article 1 allows the Commission to apply and impose appropriate and proportionate penalties mentioned below to ensure compliance with licensing conditions, its provisions, and the provisions of the Professional

(1) Article (22) of the previous law.

(2) Article (25) of the same law, which relates to agreements that violate competition and economic concentration

(3) Paragraph (3) of Article (16) of the Satellite License, issued by the Emirates Telecommunications Authority No. (2, 2010), previous source, pp. 49-50, and it is noted: Article (16.3.2) of the Emirates General Telecommunications License No. (2, 2006), previous source, p. 52.

Practices Code and other regulations, except where specifically not addressed in this order, such as financial penalties including:
d) Imposition of financial fines and imposing a freeze on related bank accounts.78 [(1)]Paragraph (w) of the same section also stipulates confiscation as one of the penalties granted to the Communications Commission for imposition in order to ensure compliance with licensing conditions, its provisions, the Professional Practices Code, and other regulations. This paragraph specifies "confiscation of equipment that enables access to the licensee's operational headquarters."

Among the licensing conditions mentioned previously are the prohibition of anti-competitive agreements, discriminatory treatment, and other anti-competitive practices in communications, as outlined in licenses issued by the Communications Commission. This includes the possibility of imposing the above-mentioned penalties for violations of those conditions. The Commission has the authority to impose a financial penalty determined by it, provided it is commensurate with the severity of the breach or negligence, based on the licenses it issues. The licensee must comply with any penalty, fine, or condition imposed by the Commission.79 [(2)]

In cases where there is no specific provision in Order 65 or in licenses issued by the Commission, recourse is made to the Iraqi Competition Law, which stipulates fines as one of the penalties for anti-competitive practices. Article (13) of this law specifies a fine of no

(1) The imposition of the fine is noted in the Hearing Committee's decision No. (5/2014) dated 1/12/2015, and also its decision No. (2 Hearing/2014) on 2/25/2015, imposing a fine on the General Telecommunications and Postal Company for not activating the latter's service. The free consumer voice despite the requests directed to it since (2013) and because the company has not completed the connection process to activate that service, similar to the mobile and wireless phone companies that have activated that service, and the two decisions are available at the electronic address of the Iraqi Media and Communications Commission, a previous source, Last visited. 5 / 11 / 2022).
(2) Article (8) of the Regulations for Licensing Providers of Personal Mobile Communications Services via Satellite (GMPCS), previous source, p. 8, and Article (9) of the Regulations for Granting Internet Service Providers (ISP), previous source, p. 9, and Article (9) From the terms and conditions for regulating the granting of satellite station licenses (VSAT), previous source, p. 9.

less than one million dinars and no more than three million dinars. This means that Iraqi law has adopted a specific fine, which entails the convicted party being obliged to pay a certain amount to the state treasury as determined by the judgment.80[1]

With the determination of the minimum and maximum limits of the fines imposed, it would be preferable, in our opinion, for the fine to be relative, varying depending on the nature of the anti-competitive practice, the extent and duration of the harm caused, and other factors that influence the fine percentage. This approach is outlined in the methodology of the Jordanian Competition Law. Such fines are more appropriate for deterring violators, especially considering that telecommunications companies, whose profits can reach millions of dollars, cannot be effectively deterred by fixed fines. This poses a risk to competition. Relative fines, on the other hand, are proportionate to the benefit gained and the total sales of the violating company. In determining the fines imposed, various factors should be considered, such as the extent of the benefit gained, the degree of harm suffered by the complainant, and other relevant factors. This approach promotes fairness and deterrence. In cases where the extent of sales is unknown, fixed fines can be applied.

As for custodial penalties (imprisonment), which are also criminal penalties, the imposition of this punishment is usually entrusted to the judiciary, which has jurisdiction whenever the matter concerns individual freedoms. These penalties are imposed in cases of serious violations committed by a natural person, involving blatant and deliberate breaches of laws and regulations related to competition.81[2]
The Jordanian Telecommunications Law stipulates in Article 79 a penalty of imprisonment for a period not less than one month and not exceeding six months for engaging in unauthorized interconnection, which is considered an anti-competitive practice. It's worth noting that

(1) Dr. Ahmed Mohamed Mahmoud Khalaf, Criminal Protection of the Consumer in the Field of Nonviolation of Prices, Protection of Competition, and Prevention of Monopoly, New University House, Azarita - Egypt, 2008, p. 201.
(2) Model Law on Competition, Intergovernmental Group of Experts on Competition Law and Policy - Geneva, UNCTAD Study Series on Competition Law and Policy Issues, United Nations, Geneva, - Twelfth Session 9-11 July 2012, p. 74.

while the Jordanian Competition Law does not explicitly mention imprisonment as a custodial penalty for anti-competitive practices, Article 26 states that: "The imposition of a fine under the provisions of this Law shall not preclude the imposition of imprisonment under the provisions of the Penal Code or any other law." This means that it is permissible to impose a fine under the Competition Law and imprisonment under other laws, allowing for the combination of both as penalties for anti-competitive practices.82

In Iraq, regarding Order No. 65 of 2004, it does not specifically address imprisonment for violating its regulations and rules. However, concerning the penalties outlined in the Iraqi Competition Law, imprisonment is listed as one of the sanctions imposed for anti-competitive practices. Article 13 of the mentioned law stipulates imprisonment for a period of not less than one year and not exceeding three years for such violations.

There is an opinion 82[(1)], and we support it, which goes to endorse the approach taken by the Jordanian legislator in the Competition Law.83 And also Order 65 of 2004 does not mention custodial penalties, while emphasizing the importance of omitting this penalty, especially in the early years of law enforcement, to ensure sufficient expertise in this field. A decision to impose imprisonment could be based on unsound or subjective grounds during a period when the authorities lack sufficient experience. Monetary penalties can somewhat compensate for this, whereas it would be challenging with custodial penalties. Therefore, it would have been preferable for the Iraqi legislator to follow the recent trend of excluding this penalty.

Conclusion

1 .Mechanisms for regulating the telecommunications market are divided into procedural aspects concerning the procedures for filing arising claims, litigation procedures, and the enforcement of judgments, as well as objective mechanisms through issuing necessary measures

(1) Dr . Maghawri Shalabi Ali, Protecting Competition and Preventing Monopoly between Theory and Practice, Dar Al-Nahda Al-Arabiya, Cairo, 2005, pp. 349-350.

and penalties to ensure the fair implementation of competition rules in the telecommunications sector.

2 .According to the Jordanian Telecommunications Law, the responsibility falls on the Telecommunications Regulatory Commission to ensure the provision of communication services and information technology to beneficiaries on an equal footing and at reasonable prices, thereby achieving optimal performance in both the telecommunications and information technology sectors. The Telecommunications Regulatory Commission in Jordan has issued instructions for dispute resolution among licensees, applying these instructions to resolve disputes that arise between licensees according to the procedures described therein.

3 .The intervention of the regulatory authority should be based on a complaint from the licensee, rather than the authority intervening automatically in case of suspicion of anticompetitive practices.

4 .The competent commissioner as a dispute resolution mechanism has the authority to choose one of two methods: either ruling on the complaint according to the procedures described in these instructions or resorting to alternative means by inviting the parties to negotiate or attempt to settle the dispute between them.

5 .The Iraqi Communications and Media Commission is the sole responsible entity for granting licenses in the fields of telecommunications, broadcasting, and information services throughout Iraq, and it has the authority to impose penalties on licensed companies for engaging in practices that hinder or violate competition in the telecommunications sector.

6 .The telecommunications companies (licensed ones) are subject to penalties if they engage in any practices that prevent or interfere with competition in the telecommunications sector.

7 .Order 65 of 2004 does not explicitly mention penalties for anticompetitive practices in telecommunications, but the penalties for such practices can be included within the ninth section of this order. According to this order, the authority has the power to impose appropriate penalties to ensure compliance with licensing conditions, professional practice codes, regulations, and other provisions.

8 .We can resort to a licensing agreement for cellular telephone services between the Iraqi Communications and Media Commission and AsiaCell to specify the control mechanisms in telecommunications. It wisely included arbitration as a means of dispute resolution, which parties can resort to in case of disputes related to interpreting or implementing the licensing agreement. Arbitration is important as an alternative means of dispute resolution, as it should not be imposed on disputing parties. It would have been preferable to explicitly state arbitration within the telecommunications legislation, which is an exceptional approach in comparative legislation.

9 .Despite the absence of explicit compensation provisions in Order 65 of 2004, which is the effective telecommunications legislation in Iraq, and the regulations issued under it, this does not prevent the aggrieved party from seeking compensation for anticompetitive practices in telecommunications under general principles of civil law. Moreover, the Iraqi Competition Law grants the aggrieved party the right to seek compensation, and it would have been preferable to include compensation within telecommunications legislation.

10 .Penalties imposed for anticompetitive behavior in the telecommunications sector, as stipulated in telecommunications laws and related regulations, are mostly financial penalties, followed by other penalties, which are mostly precautionary measures. As for custodial penalties, despite being included in the Iraqi Competition Law as one of the penalties for anticompetitive practices, Order 65 of 2004 did not address imprisonment for violating the provisions of that order, and it was wise not to do so.

11. The procedures taken in laws subject to comparison and the regulations issued under them, along with the legal framework for settling telecommunications disputes in general and disputes related to anticompetitive practices in particular, undoubtedly ensure the guaranteed protection of competition in this sector. This is achieved through the authorities granted to telecommunications regulatory bodies to regulate competition in this sector, accept complaints, investigate them, have the power to resolve disputes, impose penalties, and exercise oversight over anticompetitive practices.

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