

Respecting the principles of competition and consumer protection in liquidation sales: a comparative study

Tariq Kameel*

Al-Ain University,
P.O. Box 64141, Al Ain, UAE
and
Arab American University,
P.O Box 240, Jenin, Palestine
Email: tariq.kameel@aau.ac.ae
*Corresponding author

Nour Alhajaya

Al-Ain University,
P.O. Box 64141, Al Ain, UAE
and
Mutah University,
P.O.7, Al-karak, Jordan
Email: nour.alhajaya@aau.ac.ae

Fayez Alnusair and Mohammad Alkrisheh

Al-Ain University,
P.O. Box 64141, Al Ain, UAE
Email: fayez.alnusair@aau.ac.ae
Email: mohammad.alkrisheh@aau.ac.ae

Abstract: This article discusses the most relevant restrictions placed upon liquidation sales to respect the principles of competition, while avoiding involvement in anti-competitive practices, mainly as liquidations involve the reduction of the prices of goods. Additionally, the article discusses the assurances placed when obtaining authorisation for liquidation sales that seek to protect consumer rights, concluding with a description of the research's most important results and recommendations. Its connection and impact not only impact the realm of consumer protection, but are also relevant to the principles of fair market competition. The significant effects on consumers' freedom to exercise their right to choose freely and transparently without any restrictions while laying safeguards to protect consumers within the principles of free market, are also discussed. The paper aims to examine the legal framework of liquidation sales in the legal systems of the countries under study and its impact on consumers' interests, the precautions and safeguards within the legal systems under study.

Keywords: liquidation sales; consumers; competition laws; suppliers.

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Biographical notes: Tariq Kameel received his PhD in Private Law, Commercial Law in 2008, College of Legal, Economic and Social Sciences, University of Muhammad V, Rabat, Agdal. He received his Postgraduate Diploma in Depth Studies in Contracting Law (Master in Private Law, Commercial Law) College of Legal, Economic and Social Sciences, University of Mohammed V, Rabat, Agdal in 2001–2004, and Law degree in 2000 from Aleppo University, Syria. His research interests are commercial law, e-commerce, arbitration and consumer protection.

Nour Alhajaya received his PhD in Private International Law in 1999 and Master's in International and European Law in 1995 from Rouen University and obtained his Bachelor's in Law from Mutah University in 1993. His research interests are conflict of laws, conflict of jurisdiction, execution of judgement, nationality, arbitration, international trade, civil procedures, and contracts.

Fayez Alnusair received his PhD in Intellectual Property Laws, Robert Schuman University (Strasbourg III), France and Master of Intellectual Property Laws, Robert Schuman University (Strasbourg III), France. He obtained his Master of Private Law, Robert Schuman University (Strasbourg III), France and Bachelor of Law, Yarmouk University, Jordan in 1997. His research interests are intellectual property laws and sports law.

Mohammad Alkrisheh received his PhD in Criminal Law, Ain Shams University, Egypt, Master of Law, University of Mutah, Jordan and Bachelor of Law, University of Mutah, Jordan. His research interests are general penal law, private penal law, criminal procedure, criminology and the science of punishment.

1 Introduction

Liquidation sales are methods used by commercial establishments to enhance liquidity by turning products into cash. Securing cash flow is necessary to protect the business's capital, which, in turn, protects the sustainability of a commercial establishment. On the other hand, if the liquidation sale's purpose is to close the establishment, the sale works to provide the cash needed to fulfil the business's financial obligations. The final goal may be to dispose of stored products at the end of a particular season or to allow the company to change the nature of its activities.

The modern economic system is based upon the philosophies of market mechanisms, free market and competition, which may lead to practices that affect the principle of free trade between merchants and consumers, or that they upset the balance between supply and demand or the professional and the consumer, against the interests of the latter (Awad and Zaynab, 2018). Therefore, legislators need to create guarantees to reset the balance between the two parties to the contract, placing regulations upon liquidation sales to protect consumers.

Additionally, it must not be ignored that preventing the free operation of liquidations also protects competitors who practice the same business activities. Fair competition rules in the market must be respected when allowing an establishment to conduct a liquidation sale.

These observations have driven the authors of this article to question what mechanisms laid in place by legislators in France, Jordan, and the United Arab Emirates in order to control liquidation sales to protect market competition principles and provide essential protection consumers may require at the same time.

At this point, it is essential to emphasise the significance that liquidation sales laws must abide with rules of competition, ensuring that liquidations do not become anti-competitive. Additionally, the most relevant safeguard provided by each legislature analysed, in order to emphasise their effective role in protecting consumers both during and after liquidation sales. Liquidation sale measures are economic tools that enable the establishment/trader to create economic flow of goods within the commercial transactions taking into consideration. Therefore, it is essential to identify the legal precautions of both the consumers and competitors, within the legal framework of the understudy legal systems.

In or to provide an accurate analyse of the subject matter understudy, the article seeks to study the relevant laws of each jurisdiction, deliver an in depth analysis of them to outline the stipulations necessary for conducting liquidation sales that protect and respect consumers while at the same time ensuring respect for the principles of fair competition.

2 Restrictions upon liquidation sales that respect the principles of fair competition

Before discussing these restrictions, this article starts with the definition of liquidation sales and competition. In this stance it is essential to generally identify the concept of commercial transactions in order to have a clear understanding liquidation. Some types of business transactions are commercial even if it is done only once by a non-merchant, which is known as commercial business in its absolute nature. These laws have stipulated purchase within intent to sell as a commercial activity where the buyer intends to make a profit from reselling. The consideration here is the intent to make profit by the seller and not the actual realisation of that profit.¹

The French Commercial Code [hereinafter FCC] (Article L 310-1) stipulates that liquidation sales is:

“Sales which are accompanied or preceded by marketing or advertisements which seek to announce reduced prices, the purpose of which is to expedite the sale of some stored products of all or part of a company or establishment based on a decision [made by the establishment], regardless of the reason for it: whether the reason is the permanent or temporary cessation of business practices, the alteration of that activity, or the fundamental amendment of the method of doing business or trade.”²

Emirati Law 6 of 2016 regarding discount sales and liquidations [hereinafter EDSL, 2016] states that liquidations are ‘The sale of goods at a price less than the original price to liquidate products, a selection of products, the closing of a business establishment, the changing of business activities, or otherwise’.³ This definition is similar to that of Article 2 of the Jordanian Regulations for Discounts, Liquidations, and Prize Offerings (Number

63 of 2013) [hereinafter JRDLPO, 2013], which defines liquidations as ‘The sale of products and possessions of a business establishment for the aim of closing or changing purpose, with discounted prices’. It is crucial to notice here that the definitions at their core define liquidations by confirming that products are to be sold at a price less than before the liquidation, giving examples of why a merchant may seek to engage in this type of sale.

With these similar definitions in mind, liquidation sales may be defined as a sale conducted by the owner of a commercial establishment through the announcement of products owned by the establishment at reduced prices during a specified period after obtaining the necessary approvals from the relevant government entities. This is done, for example, to dispose of stored goods or close the establishment. This definition clarifies the essential elements of liquidation sales that relate to the two parties of the sale: the trader and the consumer, the procedural conditions for the sale such as authorisation and marketing, and, finally, the purpose for the sale so that it does not seek to harm competition.

Competition is defined as ‘engaging in economic activity according to the mechanisms of the market without impacting or restricting those mechanisms to the point that it negatively impacts trade or development’.⁴ Based upon this definition, it can be determined that competition aims to encourage innovation and serve consumers’ interests while sustainably promoting business development and making employees more efficient. The relevant legislation created to organise competition indicates that upsetting free competition may occur through agreements⁵ that restrict competition between commercial establishments/companies.⁶ Consequently, legislatures prohibit any agreements that seek to undermine market principles and free competition. Among these principles, for example, are the prohibition [see Al-Shafi’i, (2016), p.22; Effendi, (2010), p.40; Buzayd, (2018), p.85] of parties agreeing to fix the prices of goods or services rendered or placing conditions upon sales that negatively impact competition.⁷ Merchants are also prohibited from any practice that undermines the integrity of business transactions, such as directly or indirectly creating a minimum price for the resale of goods and services or selling any product for less than it was bought, only excluding products that have been authorised to be sold in liquidation to close a business or renew supplies.⁸ Therefore, the permission to conduct liquidation sales at prices less than those of the market is connected to reasons established by law that will positively impact competition in the market and therefore do not impact the principles of competition.⁹ Consequently, it is necessary to outline the most relevant restrictions on liquidation sales that respect the principles of competition, with the goal of preventing liquidations from deviating from their legally proscribed purposes and entering the realm of anti-competitive practices (Taha, 2006). These restrictions include the following:

2.1 Obtaining prior authorisation from relevant authorities

French, Jordanian, and UAE laws all require obtaining authorisation for a different period before conducting liquidation sales. In the UAE, liquidations are not covered by the Commercial Transactions Code [hereinafter CTC], but rather are organised by Law 6 of 2016, EDSL, 2016. Article 2 of this law requires that an application be filed no less than two weeks before the determined liquidation period to obtain the necessary

permission from the Department of Commercial Licenses in the Commercial Affairs Administration in the relevant Economic Development department of each emirate.¹⁰

In Jordan, approvals are governed by the JRDLPO, 2013 (no. 63 of 2013) and obtained from the Market and Supply Control Directorate in the Ministry of Industry, Trade and Supply or the Industry and Trade Directorate in the relevant province. In France, it is sufficient to inform the head of the local authority (mayor's office) where the liquidation will take place, who will then notify the relevant regional Chamber of Trade and Industry.¹¹ The liquidation sale cannot occur until receiving notice of receipt of the announcement (*récépissé*) from the head of the local authority (paragraph 3 of Article R 310-3 of the Regulatory Section of the French Commercial Code).

In Jordan, this authorisation is not granted except after presenting a written application to the relevant authority and completing the necessary procedures for either cancelling the trading license, liquidating the company, or changing the business purpose¹² (part 1, paragraph A, Article 3 of the Jordanian Regulations of Discounts and Liquidations). On the other hand, Emirati law requires that the current business license be valid, that a legal reason be provided, and that prices must be reduced by at least 40%. In France, the law requires that an announcement of the regulation must be presented to the head of the local authority in writing at least two months before the liquidation is to begin, or five days if it was unexpected that the establishment would close (Article 2-310 of the Regulatory Section of the French Commercial Code).

The application must include the type of goods to be liquidated, their prices both before and during the liquidation, and the period, location, and reason for the liquidation. The period and grounds will be described in a later section.

Liquidation sales without prior authorisation are prohibited because this type of sale impacts the principles of free competition in the market, as marketing or announcing the sale of goods to consumers is part of the commercial strategy of the merchant and done with conditions that benefit the consumer through reducing prices and expediting the sale of products. Therefore, such business practices could potentially be dishonest and harmful to the principles of competition.¹³ Additionally, liquidation sales without prior authorisation represent a breach of the laws that prohibit uncompetitive business practices, as they circumvent the assurances placed by the legislature.

2.2 Liquidation sales must be during a specified period

As liquidation sales are permitted outside the general rules of competition provided by law, they must not be conducted in perpetuity and limited to a specific period defined by each jurisdiction. In the Jordanian Regulations for discounts, liquidations, and prize offerings (number 63 of 2013), it is not permissible for liquidation sales to exceed three months from granting authorisation from the relevant authority. This period may not be extended except once, for an additional month, with reasons given¹⁴ such as enough products have not been sold, and the merchant requires more time to move the most products possible. Jordanian law also restricts merchants to only conduct a liquidation sale for the same reason after three months have passed since the original sale.¹⁵ On the other hand, French law sets this period to two months or 15 days when the merchant is ending a season.¹⁶ If the sale extends beyond two months, a new application must be filed.¹⁷ In Emirati law, liquidation sales can take place for 30 days, beginning from the approval date. This can be renewed for a similar period if a fee is paid pre-determined by the directorate, with the condition that the extension is for a valid reason accepted by the

government. The local authority will then determine the discount percentage required during this extension.¹⁸ In exceptional circumstances, when the liquidation's purpose is to move the business in its entirety to another emirate, Emirati law allows liquidation sales to extend to up to four months.¹⁹

It is important to note that French law does not explicitly state when the liquidation sale should begin, as opposed to Emirati and Jordanian law. This is a positive aspect for business owners, as the reason for conducting the liquidation sale could be delayed beyond the period applied for. For example, in French law, it is possible for a delay in the reason for liquidation to extend for up to six months. Suppose the law had placed the maximum length for the liquidation period based upon the date of informing the head of the local authority or the date of the recorded receipt. In that case, it is possible that the period for the sale would end before the reason for liquidation materialised. For this reason, French law requires that if the reason for liquidation does not arise within six months, the merchant must inform the relevant authorities.

Defining the liquidation sale period to take place protects other merchants from the danger of uncompetitive practices. It also respects the exceptional limitations placed by the law based on preventing the direct or indirect fixing of the prices of goods and services, which negatively impacts competition.

2.3 Specifying the reasons for liquidation sales

As liquidation sales inevitably entail the reduction of the price of goods according to the law, they must not violate the principles of fair competition. Liquidations must be within the realm of the restrictions provided by law, among which is the statement of a valid reason for conducting a liquidation.

According to Article (L 310-1) of the French Commercial Code, liquidations must be a business decision, regardless of the underlying reason, to either cease business activity entirely or seasonally, to change the nature of the business activity, or to fundamentally change the working conditions of the establishment.

In the UAE, Article 9 of EDSL, 2016 states that the owner of a commercial establishment has the right to apply to the relevant department for a liquidation of its products in one of the following situations:

- 1 Changing the business activity to another that is wholly different from the previous activity.
- 2 Cancelling the business license with a mention of the reasons for doing so.
- 3 Liquidating the business because of the bankruptcy of the merchant.
- 4 Abandoning business in one or more types of products, with the condition that the liquidation is conducted only in these products.
- 5 Moving the business in its entirety to another emirate. The liquidation, in this case, must be conducted in no more than four months.

Jordanian law allows for only three reasons: closing the business establishment, liquidating the company, or changing purpose.

Based on the provisions of each legal system, it is possible to describe the valid reasons for conducting a liquidation sale as the following:

2.4 *Cessation of business activity*

The meaning of ceasing business activity is an administrative decision. It is the right of a merchant to terminate his business activities for economic reasons, such as a reduction in the benefits of doing business. These reasons may also be personal, such as the merchant's desire to retire. Finally, the cause may also be out of the merchant's hands, such as if he/she declares bankruptcy.

It is also conceivable that a merchant who is involved in several different business activities desires to cease one activity as it is no longer viable, or he/she is unable to continue. He/she, therefore, seeks to liquidate the products related to that activity.

If the purpose for liquidation is based on a decision to cease business activity permanently, the merchant must provide evidence through the cancellation of his company's license or indicate that his/her establishment or company has ended or frozen its activities.²⁰

2.4.1 *Partial cessation of business activity*

A merchant might conduct a business activity during a specific period, after which products remains that he/she cannot sell and therefore decides to liquidate them. This is often the case for clothing stores, for example, where summer products differ from those sold in the winter. Article (R 310-5) of the French Commercial Code specifies the period for these types of liquidations to only 15 days. Jordanian and Emirati law do not specify a period for this type of liquidation.

2.4.2 *Changing business activity*

In this case, a merchant seeks to completely change the type of his/her business, such as switching from selling clothing to selling food. Therefore, he/she aims to liquidate the products related to the former activity so that he/she can restock to accommodate the new activity.

2.4.3 *Fundamental change in infrastructure or conditions of investment*

It is conceivable that a merchant might wish to make significant physical changes to his/her business establishment, such as expanding a shop, which means that he/she, must liquidate existing products. In this matter, the Paris Court of Appeal has ruled that placing advertisements before conducting physical changes to the commercial premises is considered a liquidation.²¹ Businesses might also wish to fundamentally change their company's organisation for economic reasons, which require the liquidation of existing products.

A liquidation sale can be legitimately held due to a fundamental change in the business conditions, such as replacing the registered trademark with the new address of a shop, due to the high value of this trademark and its popularity among consumers.²²

2.4.4 *Restrictions on the goods to be liquidated*

To preserve the principles of fair competition in the market and respect the exceptional nature created in law for liquidation sales, it is prohibited during the liquidation period to offer products for sale outside that which is one the list of goods to be liquidated

approved by the authorities. Merchants, therefore, are prohibited from adding new types of products that were not on the original list or advertisement.

It is also not allowed for merchants to restock their supplies during the liquidation period, whether with the same goods that are being liquidated even if they come from a different supplier or company²³, or if these new supplies come with new conditions, attachments, or bills.²⁴

Emirati and Jordanian law have not mentioned the above situations, which could constitute manipulating the market by merchants. This article encourages the legislatures in the UAE and Jordan to be aware of the necessity to be mindful of these situations when approving liquidation sales applications.

3 Restrictions on liquidations sales that ensure consumer protection

The most critical assurances provided by law to protect the rights of consumers during liquidation sales include the following:

3.1 Assurances to protect consumers during marketing campaigns

Marketing generally seeks to reach the largest consumer population possible and promotes goods and services rather than acting as a direct sale mechanism. Its success usually relies upon repetition and lasting for a long time (Veysiere, 1999; Fabre and Mainguy (1993).

Announcing a liquidation is a necessary condition for merchants following approval from government authorities. Each jurisdiction covered in this article prohibits advertising a liquidation sale until all approvals have been received or, in France, after announcing the decision to conduct a liquidation sale to the head of the local authority. Announcements are also necessary to protect consumers from the deception that could occur if merchants offer products for sale ‘at liquidation’ higher than their original price.

French law requires that marketing and announcements for liquidation sales be honest and transparent. Announcements must contain information regarding only products slated for liquidation or applied for approval to liquidate. The applicant must place copies of the liquidation decision in the physical premises throughout the sale.

Additionally, the announcements or advertisements must clearly state that there is a discount in the price at the rate specified by each country’s laws. In the UAE, for example, the discount rate must be no less than 40%.²⁵ Otherwise, advertisements will be considered false or misleading as the term ‘liquidation sale’ is understood by consumers to indicate a reduction in prices.²⁶ The judiciary maintains the power to determine whether a sale qualifies as a liquidation or not. In France, the courts have determined that a liquidation sale is one where the marketing or advertisements indicate a reduction in prices due to work needed to be done on the premises and that the shop owners wish to get rid of product stocks before beginning this work.²⁷ Alternatively, not advertising the reduction in prices in an advertisement or marketing campaign does not prohibit it from being considered as a liquidation sale, as long as the company conducts the campaign as part of the permanent cessation of business activity and clearly reduces prices by at least 50% so that consumers can see both prices. This fulfils the meaning of expediting the sale of goods.²⁸

Advertisements can be done using any means, and French law has not specified any advertising medium. Examples of these advertisements could be posters inside or outside the premises, using any method of the press or the internet.

The Parisian Court of First Instance has ruled that advertisements sent by post (5,000 letters) fulfilled the conditions of advertising outlined in article (L 310-3), as the purpose of this procedure was to attract customers.²⁹ Likewise, an advertisement will be considered effective if, for example, only 3,000 notices are distributed to customers by post announcing a liquidation sale, as this fulfils the purpose of either attracting customers or announcing the presence of liquidated goods to a large number of people.³⁰ Such advertisements will be considered as deceptive if it presents false justifications for the liquidation or falsely claims that there will be future work on the business premises, even if the intent to conduct such work exists.³¹

It is also important to note that French law prohibits spreading false or misleading information by any means, by, for example, offering goods for sale or using dishonest methods to create confusion in the market or an attempt to raise or lower prices of goods or services artificially.³²

In Jordanian Law, paragraphs 3 and 4 of Article 2 of the Regulations for Discounts, Liquidations, and Prize Offerings (number 63 of 2013) set regulations for advertising liquidation sales, requiring that advertisements be made clearly on the exterior of the premises that all of the goods inside the shop are included in the liquidation, containing the statement ‘All items in the store are included in the liquidation’, as not all goods may be part of the liquidation. For example, in some larger establishments that contain more than one type of goods, only certain types might be included.

The announcement must also include the prices of the goods before and during the liquidation sale and can consist of all phrases except ‘under liquidation’ or similar expressions. Paragraph A of Article 8 of the Jordanian Consumer Protection Law [hereinafter JCPL, 2017] (No. 7 of 2017) prohibits any advertisements that mislead consumers.

In the UAE, Article 12 EDSL, 2016 of Law 6 of 2016 requires obtaining authorisation for liquidation sales before beginning any advertising or marketing through any method, which means that liquidations can only be advertised once approvals have been received. By advertising before obtaining the necessary permissions, merchants would be placed in the embarrassing position with consumers and could negatively impact their brand image. UAE law also requires that advertisements include the start and end dates of the liquidation and the percentage to which goods will be discounted. When looking at the general principles of the UAE’s Consumer Protection Law (Federal Law 15 of 2020)³³, there is no definition given of ‘advertisements’, and it could be understood that commercial advertisements are methods used by merchants to psychologically impact the public to convince them of the advantages of a particular good or service or to announce a specific offer.³⁴

Emirati law has also been watchful of consumers rights from any potential misleading advertisements³⁵, as the Consumer Protection Law [hereinafter ECPL, 2020] (Federal Law 15 of 2020.) in order to prevent undermining consumers legal safeguards stipulated within the law.

As the above mentioned law defined misleading advertising as “the advertisement of a good or service based on false information or the omission of fundamental or basic information related to the good or service that impacts the consumer and entices him to contract in a situation where he/she would not normally do so if that information was

provided. Such advertisements also include the announcement of imaginary or non-existent prizes or discounts". Paragraph 2 of Article 8 of the same law states, "When suppliers announce the prices of goods and services, they must do so in a way that is not misleading".

Article 2 of the UAE Federal Law Regarding Combating Commercial Fraud [hereinafter ECCFL 2016] (Law 19 of 2016) stipulates

"Commercial fraud consists of any of the following actions:

- a The announcement of imaginary or non-existent prizes or discounts.
- b Taking advantage of, presenting, or promising to present commercial advertisements that falsely promote [goods and services], false advertising, or promoting adulterated, defective, or imitated products.
- c Offering, presenting, promoting, or advertising fraudulent commercial services."

Therefore, misleading advertising is a form of commercial fraud if it announces a liquidation, an announcement, presents a false claim, or is formulated in a manner that directly or indirectly leads to the deception or misleading of consumers. For example, an advertisement would be considered fraudulent if it announced that certain products were subject to liquidation when, in fact, there is no such liquidation (Abud, 2012).

3.2 Protection of consumers by holding suppliers to their announcements

Suppliers of goods and services are responsible for informing consumers before concluding the contract of all the fundamental terms and conditions related to the product that they could not know themselves. This responsibility in French law is upon both producers and suppliers before the contract is completed³⁶, and a violation of this responsibility subjects them to a fine of 3,000 Euros if the people involved are natural persons or 15,000 Euros if they are legal persons, according to articles (L 111-1 to 111-3). In situations where the suppliers do not fulfil the conditions of the announcements provided in articles (L 111-7 to L 111-7-2), the fine can reach 75,000 Euros if the violator is a natural person or up to 375,000 Euros if they are legal persons.³⁷ If the contract is concluded based on false information presented about a product by the manufacturer, the contract is voided.

Likewise, in Jordanian law, statements made in advertisements are contractual obligations placed upon the supplier and considered a consumer right³⁸, a violation of which is one of the contract itself. This is outlined in paragraph B of Article 6 of the Consumer Protection Law, which states that non-fulfilment of contractual obligations include any of the following:

- '1 Incorrect information provided to consumers of a product or service, or the withholding of critical information.
- 2 Incorrect information provided to consumers before the completion of the purchase concerning obligations upon the supplier or the rights of the supplier in providing or withholding any fundamental information provided to consumers'.

The violation of these obligations is a criminal offense, and violators are subject to either a fine of no less than 250 and no more than 10,000 Dinars or a jail sentence of no more than six months, or both. If the violation is repeated, the supplier will be prohibited from permanently or temporarily practicing the violating business activity.

Emirati law requires informing consumers of the terms and conditions placed on products in the liquidation sale, such as the number of products, their price, description, country of origin, method of production, and the details of the producer.³⁹ In the case these requirements are violated, Emirati law stipulates fining the supplier with a jail sentence of no more than 60 days and a fine no less than 10,000 and no more than 2,000,000 Dirhams, or either of the two punishments.⁴⁰ At the same time, these are considered contractual violations, and consumers are given the right to civil action to annul the contract and seek compensation.

3.3 Consumer protections requiring suppliers to announce prices and guarantee against hidden defects

Merchants conducting liquidation sales must clearly inform consumers of the details of the goods or products they sell, such as their weight, type, amount, country of origin, and any copyrights, property rights, or other forms of privileges. It is also the right of consumers to obtain correct information regarding the prices of the products that they purchase or use [Mahdi and Kameel, (2019), p.1268.]. Therefore, it is the supplier's responsibility to indicate the price of the goods both before and during the liquidation sale to allow consumers to know the difference between them.

Additionally, suppliers must announce the prices of goods when offering them for sale without being misleading, and the price must be at least at the level specified by the local laws. In the UAE, the discount must be at least 40%, while France and Jordan have not set a discount rate. Therefore, it is upon merchants to clarify the amount they have discounted; otherwise, there would be no advantage for them to engage in liquidation sales (Elsaadani, 2019, p.18.).

The three legal jurisdictions covered in this article assure the consumer's right to obtain quality goods without defects, a right which is also extended to liquidation sales. They must honour the right of the consumer to return and exchange products that they have paid for. Article 12 of the UAE Consumer Protection Law states that "suppliers, when a defect in a good or service is discovered, must repair, replace, or take it back and return the money paid, or perform the service again without asking for additional compensation, according to the executive regulations for this law". Article 7 of the Jordanian Consumer Protection Law follows similar lines, requiring suppliers to accept the return of products and refund the purchase price when requested by the original purchaser or any other person who has come to own the product. If the supplier cannot take the product back due to a defect during use, he/she must pay the consumer to compensate for the defect. It is interesting to note that Emirati and Jordanian law do not specify a warranty period, but based on the general principles of the law, this is set at six months (Article 555 of the Emirati Civil Code and Article 521 of the Jordanian Civil Code).

In French law, in addition to confirming the consumer's right to return defective products and receive a refund or replacement, suppliers are required to provide a warranty for all defective products purchased within six months of the liquidation sale according to Article 7/217 of the Consumer Protection Code.⁴¹ Customers also have the right to withdraw from the contract (of consumers only)⁴² within 15 days within certain restrictions.⁴³ Therefore, this article suggests that the Emirati and Jordanian laws be amended to allow customers to withdraw from a consumer contract within a similar period, following what has been adopted in French law.

4 Conclusions

4.1 Remarks

- 1 Liquidation sales do not only impact the realm of consumer protection but are also relevant to the principles of fair market competition, as the goal of both is to promote consumer welfare. Both realms of the law also seek to encourage the active development of the market and correct imbalances. Consumer protection and fair market protection reach these goals in different ways, as the latter works on the supply side of the market by ensuring that consumers are provided with sufficient choices at reasonable prices while the former works on the demand side by empowering consumers to exercise those choices freely and transparently. Each legal system covered by this article has attempted to achieve these goals, despite their differences, and explicitly state the degree to which they ensure consumers' rights and enhance positive competition in the market.
- 2 The Emirati, French, and Jordanian legal systems have each placed restrictions on liquidation sales to protect the principles of market competition, such as requiring prior authorisation from relevant authorities, specifying the goods offered for liquidation and their prices, prohibiting suppliers from restocking during the sale, and limiting the reasons for liquidation sales to the cessation or alteration of business activity, moving stored products, cancelling the establishment's commercial license or, in the specific case of the UAE, moving the business from one emirate to another.
- 3 The jurisdictions covered by this article also provide a range of assurances to consumers to protect their rights before and during liquidation sales, such as prohibiting suppliers from misleading advertising, providing consumers with fundamental information about the liquidated products, and guaranteeing against hidden defects that are discovered during and after the sale.

4.2 Recommendations

- 1 This article encourages the Emirati and Jordanian legislatures to place restrictions that specify the nature and volume of products to be sold in liquidation to prevent dishonest merchants from manipulating either of these.
- 2 This article encourages the French and Jordanian legislatures to specify the percentage of the discount on the products offered during a liquidation sale, following the example of the UAE that requires the discount to be at least 40% lower than the pre-liquidation price.
- 3 This article encourages the Emirati and Jordanian legislatures to acknowledge the customer's right to withdraw from a consumer contract, as is the case in French law.
- 4 This article encourages the Jordanian legislature to pass a specific law to organise liquidation sales, as is the case in France, rather than only relying upon regulations. This can be done by integrating the regulations on discounts and liquidation sales into the commercial code.

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Notes

- 1 It should be noted that the comparative commercial legislations have taken the standard of speculation and trading to impart a commercial nature to See Article 5 of the Emirati Federal Commercial Transactions Code (Law 18 of 1993), Article 6 of the Jordanian Commercial code (Law 12 of 1966) and Article 110-1 of the French Commercial Code.
- 2 This definition of liquidation sales is taken from the French definition found in Article (L 310-1) of the FCC, which states:

Sont considérées comme liquidations les ventes accompagnées ou précédées de publicité et annoncées comme tendant, par une réduction de prix, à l'écoulement accéléré de la totalité ou d'une partie des marchandises d'un établissement commercial à la suite d'une décision, quelle qu'en soit la cause, de cessation, de suspension saisonnière ou de changement d'activité, ou de modification substantielle des conditions d'exploitation.

Les liquidations sont soumises à déclaration préalable auprès du maire de la commune dont relève le lieu de la liquidation. Cette déclaration comporte la cause et la durée de la liquidation qui ne peut excéder deux mois. Elle est accompagnée d'un inventaire des marchandises à liquider. Lorsque l'événement motivant la liquidation n'est pas intervenu au plus tard dans les six mois qui suivent la déclaration, le déclarant est tenu d'en informer l'autorité administrative compétente.

- Pendant la durée de la liquidation, il est interdit de proposer à la vente d'autres marchandises que celles figurant à l'inventaire sur le fondement duquel la déclaration préalable a été déposée.
- 3 See Law 6 of 2016 regarding Discount Sales and Liquidations published in the Official Gazette, Issue 41, 10/13/2016.
 - 4 Article 1 of the Federal Emirati Law 4 of 2012 regarding the Organisation of Competition [hereinafter FELOC 2012] published in the Official Gazette, Issue 542, Year 42, 10/23/2012, defines competition. See Al-Maji, (2018, p.37).
 - 5 Agreements that restrict competition are all contracts or agreements, explicit or implicit, in whatever form, or a coordination of behaviour that aims or leads to the prevention restriction or distortion of competition in the market, that causes competition to be based on other unfair foundations. The form of these agreements is irrelevant and can take the form of a contract, agreement, or other type of legal structure such as coordination between establishments. See Buzayd (2018, p.75) and Kameel (2020, p.17).
 - 6 One approach to jurisprudence defines establishments in a purely legal fashion, or that they are 'a group of persons or capital brought together to achieve a particular aim and practice an activity in order to achieve that goal'. Emirati law approaches establishments in order to define the limits within the general principles of competition, with Article 1 of the FELOC 2012 defining establishments as 'any natural or legal person that undertakes an economic activity, or any person attached to it or a group of individuals regardless of their legal status'. From this definition, Emirati law has combined between the legal and economic approaches. For more, see Al-Shafi'i (2016, p.24), Effendi (2010, p.45), Buzayd (2018 p.113), Al-Maji (2020, p.46) and Kameel (2020, p.20).
 - 7 See line A, paragraph 1, Article 5 of the Emirati Federal Law (Law 4 of 2012) regarding competition; line A, paragraph 1, Article 5 of the Jordanian Competition Law (Law 33 of 2004).
 - 8 See Article 8 of the Jordanian Competition Law (Law 33 of 2004).
 - 9 This is because the Jordanian legislature in the Competition Law (Law 33 of 2004), as amended, states in paragraph B of Article 7 The same meaning can be found in Article 7 of the Emirati Competition Law (Law 4 of 2012). See also Article 4-420 of the French Commercial Code.
 - 10 Law 6 of 2016, EDSL, 2016, published in the Official Gazette, Issue 41, 10/13/2016.
 - 11 This announcement must include documents outlined in Article 5 of the decision issued on 14 Jan 2009 which states:
 - a Toute pièce justifiant, selon le motif de la demande, de la perspective d'une cessation de commerce, d'une suspension saisonnière, d'un changement d'activité ou d'une modification substantielle des conditions d'exploitation et, notamment, en cas de prévision de travaux, le ou les devis correspondants.
 - b Un inventaire détaillé des marchandises concernées par l'opération de liquidation comportant au minimum les renseignements suivants : nature et dénomination précise des articles, quantités, prix de vente, prix d'achat moyen hors taxe. Les produits dont le prix de vente unitaire est inférieur à 5 € peuvent être décrits par lots homogènes.
 - c Le cas échéant, si la déclaration est faite par un mandataire, une copie de sa procuration.
https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000005634379/LEGISCTA000020161851/#LEGISCTA000020164770, accessed 3/9/2021.
 - 12 This excludes branches of the company that do not have an independent license as they are located in shopping complexes.
 - 13 CJUE 17 janv. 2013, D 2013, pan. 945, obs. Sauphanor-Brouillard; RTD eur. 2013, 570, obs. Aubert-Vincelles; RJDA 2013, n 308; RJ com. 2013, 152, obs. Leloup; Europe 2013, n 143, obs. Bouveresse.
 - 14 See line 4, paragraph A, Article 3 of the JRDILP 2013 (No. 63 of 2013).
 - 15 See paragraph 4, Article 3 of the JRDLP (No. 63 of 2013).
 - 16 See Article (R 310-5) of the Regulatory Section of the FCC.

- 17 See Article (R 310-6) of the Regulatory Section of the FCC.
- 18 See Article 10 of the EDSL, 2016 (Law 6 of 2016).
- 19 See paragraph 3, Article 9 of the EDSL, 2016 (Law 6 of 2016).
- 20 Rep. min. n 10157, JOANQ, 10 mars 2003, p.1866.CCC juill. 2003, p.4.
- 21 CA Paris, 28 Octobre 1998, CCC mai 1999, p.22.
- 22 Rennes, 1er avril 1993, RJDA 1993, n 611.
- 23 Montpellier, 22 fevr. 1994, RJDA 1994, n 1015, BID 1994, n 10, p.31.
- 24 Paris, 3 avril 2007, n 226, obs. Raymond.
- 25 See Paragraph 2, Article 3 of the EDSL 2016 (Law 6 of 2016).
- 26 For more on false advertising, see: Par, 22 juin 1994: Contrats Conc Consom. 1994, n 256, note Raymond; JCP 1994, IV, 2215. For misleading advertising, see: Crim 23 janv. 2001: Bull. Crim n 22.
- 27 Paris, 28 October 1998, CCC 1999, n 83, obs. Malaurie-Vignal.
- 28 Paris, 16 October 2002, CCC 2003, n 149 (1re esp.) obs. Raymond.
- 29 TGI Paris, 21 janvier 1998, BID 1998, No. 12.
- 30 Com. 12 November 1991, CCC 1002, n 192, obs. Raymond.
- 31 TGI Rouen, 23 fevr. 1979, D 1979, 409, mote Fortin.
- 32 Article L. 44302 of the French Commercial Code states:
- I. Est puni de deux ans d'emprisonnement et de 30,000 euros d'amende le fait d'opérer la hausse ou la baisse artificielle soit du prix de biens ou de services, soit d'effets publics ou privés, notamment à l'occasion d'enchères à distance:
- 1 En diffusant, par quelque moyen que ce soit, des informations mensongères ou calomnieuses.
 - 2 En introduisant sur le marché ou en sollicitant soit des offres destinées à troubler les cours, soit des suroffres ou sous offres faites aux prix demandés par les vendeurs ou prestataires de services.
- 33 From an observation of Emirati Law 24 of 2006 regarding Consumer Protection, there is no definition given of an advertisement, although it is mentioned in Article 1 that advertisers are 'All who advertise a good or service or promote it through the use of different advertising and marketing methods'.
- 34 Elsaadani, M.A. (2019, p.15). For more details see Unfair Commercial Practices General Report – an analysis of the existing national laws on unfair commercial practices between business and consumers in the new Member States – issued by the British Institute of International and Comparative Law, London 2005, pp.10–11. Could be found in https://www.biiicl.org/files/882_general_report_unfair_commercial_practices_new_member_states%5Bwith_dir_table_and_new_logo%5D.pdf (accessed 26 May 2021). Also the OCED Global Forum on Competition, Directorate for Financial and Enterprise Affairs Competition Committee, The Interface Between Competition And Consumer Policies, DAF/COMP/GF(2008)10. Found in <https://www.oecd.org/daf/competition/40898016.pdf> (accessed 26 May 2021).
- 35 Other Jurists had different definitions of misleading advertising. For more information, see Ahmad (1996, p.457), Issa (2013, p.290) and Adnan, (2012, p.173).
- 36 On informing consumers in French law see Articles L 111-1 to L 111-8 of the Consumer Code.
- 37 On the regulations, see Articles L 131-1 to L 131-6 of the French Consumer Code.
- 38 See Article 3 of the Jordanian Consumer Protection Law.
- 39 Article 7 of the Emirati Consumer Protection Law states that:

- 1 ‘Suppliers are required when offering a product for sale, to place clarifying information on its cover, packaging, or in the place it is offered, in a clear and readable way, and must state how it is assembled and used, according to the legislation of standard specifications in place in the country.
 - 2 If the use of the product includes some type of danger, suppliers must clearly state this according to the Executive Regulations of this law’. The same meaning can be found in Article L 112-1 of the French Consumer Code.
- 40 Article 29 of the JCPL.
- 41 Article L217-7, *Création Ordonnance no. 2016-301 du 14 mars 2016* – art. Les défauts de conformité qui apparaissent dans un délai de vingt-quatre mois à partir de la délivrance du bien sont présumés exister au moment de la délivrance, sauf preuve contraire. Pour les biens vendus d’occasion, ce délai est fixé à six mois. Le vendeur peut combattre cette présomption si celle-ci n’est pas compatible avec la nature du bien ou le défaut de conformité invoqué.
- 42 Article L.121.20 of the French Consumer Code amended by Law 841-2005, states that ‘Consumers have seven days to exercise their right to forfeit a contract without giving any reason, and without paying any compensation with the exception of the costs of returning’. It can be stated that the right of forfeit a consumer contract is a legal method given by the legislature to consumers alone that allows them to exit a contract as a result of their individual will within a specified period of time. As a result, they return to their legal state before entering into the contract. It therefore removes them from the enforcement power of the parties to the contract, with the legislature preferring the benefit of consumers as the weaker party, to provide them with active protection in the post-contractual stage (Mahdi and Kameel, 2019, p.1273).
- 43 Article L222-7, *Modifié par LOI No. 2017-203 du 21 février 2017* – art. 7: Le consommateur dispose d’un délai de quatorze jours calendaires révolus pour exercer son droit de rétractation, sans avoir à justifier de motif ni à supporter de pénalités. Le délai pendant lequel peut s’exercer le droit de rétractation court à compter du jour où:
- 1 Le contrat à distance est conclu.
 - 2 Le consommateur reçoit les conditions contractuelles et les informations, conformément à l’article L. 222-6, si cette dernière date est postérieure à celle mentionnée au 1°.