



A Legal Analysis of Regulations Dominant an Economic Competition and Foreign Investor Management Law

Yosef Ebrahimi Nasab

Young Researchs and Elite Club, Ahvaz Branch, Islamic Azad University, Ahvaz, Iran
ebrahimi_n_y@yahoo.com

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Abstract

When several people make attempt for accomplishing the same objective, they will compete due to the scarcity of resources. In commerce and trade, the same objective may be larger market share, attracting many customers, and finally higher profit. Yet, it is always likely that some economic actors collude and form cartels, sign vertical contracts, resort to monopoly, abuse other rivals' attempts, and generally disrupt market balance in unfair ways and violate consumers and other economic actors' rights. Regarding the significance of regulating and controlling relationships dominant on market, legislators must generally defend firms' rights when facing anti-competitive acts as well as expanding competition by approving various rules and establishing sanctions. These rules and regulations which brought about certain necessities lead to the formation of a new branch in law known as competition law. It is a tool to establish healthy free competition in economic actors' relationships, protecting their rights, and establishing balance in market. Unfortunately, though, many traders and economic actors when face with unfair competition acts by rivals not only fail to defend their rights but also do not lead a lawsuit against wrongdoer rival due to not being aware of rules and regulations dominant on the field. With a review of countries' experiences concerning sustainable development achievement economically agreed upon common law, it can be realized that foreign investment is considered not only as an objective but also as an introduction and a means to accomplish a supreme goal. The main function of foreign investment in these countries has been the provision of opportunities for the growth and prosperity of private sector and internationalization of domestic companies. In Iran, despite the approval of various regulations and attempts, the private sector's prosperity and growth have not been actualized so far due to the influence and control of government over the major economic sectors.

Keywords: Economic competition, market, private sector, foreign investor.

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1. Introduction

Economic Competition Law is a field of International Trade Law and International Economy Law approved in late 19th century, in the US. Then, gradually and during 50 years, it was expanded in European countries. In countries following "Free Market Economic System" like Common Law countries, it is believed that market itself must determine and define its dominant regulations. Among them are rules and principles regarding free fair proper commercial competition leading to the growth and prosperity of free and efficient trade. Since competition law regulations originate from the heart of free market and its

known principles and rules, non-commercial economic factors outside market are not involved in determining them. As a result, they bring about market prosperity and efficiency. Founding this field of law in any country is considered to be a sign of comprehensive development and expansion. Market is defined as place where buyers and sellers transact goods or services which are close and (or) similar (Article 3 of Competition Facilitating Regulations Act and rules regarding monopoly control and prevention approved by Iran government board on 01.08.2005). "Free Competition" Principle is taken to be among the accepted principles in free market-based economic systems. It is based on establishing fair and equal condition for the

presence of all traders in market and removal of free competition obstacles and fighting with monopolizing and dual or multiple commercial trends in market. In late 19th century, advent and development of new and large industries were accompanied by consequences and problems. Among them, the establishment and expansion of “industrial monopolies” can be implied. The creation and expansion of commercial monopolies which disrupted smaller and weaker groups’ activities, omitted them from commercial and economic competition cycle, and pushed them toward bankruptcy led to the approval of Sherman Act by the US government in 1890. This Act was supposed to cope with this monopoly in legal ways and provide condition for free competition in market. In the first half of 20th century, again, the incidence of world wars and then remarkable economic evolutions as well as the advent of communism as a global economic system based on free market yet opposed to liberalism economic system led countries following free market system to execution of “surveillance and protection regulations and principles” for commercial and economic firms. It was continued till the second half of 20th century.

2. Discussion I: A Review of Economic Competition Law Nature and Evolutions

Commence of competition law goes back to the last 19th century. At the time, the advent and development of new industries such as railway, marine transportation, oil and steel industries brought about problems resulted from market monopoly. Namely, the US government found out the necessity for implementing regulations in this regard. The first step was the approval of Sherman Act (1890) and then many acts. Further developed in time, these laws are known as antitrust in the US.

In European countries, competition law regulations drew attention after World War I. Various attempts made by countries resulted in an emphasis on free competition principle regarding the foundation of European Economic Community (EEC) in Rome Treaty (1957). With the passage of time, this field led most countries to think about formulating competitive rules. Hence, today, over 160 countries have taken action to approve special regulations for competition law. Among them, 80 are members of Global Trade Organization. Now, 26 African, 18 Asian, and 17 Latin American countries have special competition law.

In Iran, attempts to omit monopolies and create competitive space got started from the second economic, social, and ... development plan. The first text in this regard was prepared in March 1994 in Budget and Plan Organization. Yet, it was

failed due to the governmental economy of Iran. Next evolutions and especially policy makers’ attention toward privatization and reduction of government’s custodianship clarified the necessity for antitrust rules and competitive relationships organizing regulations. Hence, regulations regarding the facilitation of competition and banning monopoly in the ninth chapter of the Act of executing Principle 44 policies presented to parliament to be approved.

3. Speech I: Market Economic Competition Objectives and Healthy Investment

The presence of healthy competition in goods or service market leads to efficiency, quality, innovation, and reduction of price. Yet, establishing this trend requires having appropriate rules and regulations. It results in the maintenance and (or) reinforcement of competition in market. As well as the provision of the means for accomplishing the above condition, competition law follows goals below:

Economic efficiency: In a healthy competition, economic firms make attempt to reduce the prices of their goods as well as increasing their quality using modern technologies and proper management of resources. If continued, this trend will increase economic efficiency.

Consumers’ welfare: Freedom of choice is one of the accepted principles regarding consumers’ rights. It will be met, if competitive atmosphere dominates market.

Social support: In general, executing commercial competition regulations without reducing the quality and efficiency of goods will help poor people. Sometimes, competition law also supports rivals. Supporting small commercial units in some situations is among these actions.

Preventing the emergence of monopoly: Naturally, everyone tends to impose his will to others in normal condition. The same thing happens in market. It may prevent rivals and create monopoly. It is also one of the factors reducing economic efficiency.

4. Speech II: Relationship between Economic Competition and Privatization

Privatization is a process during which public or governmental sector limits its economic activity and delegates the ownership or management of a part of its economic units to market mechanism. Now that the necessity for privatization is also clear in Iran, accelerating movements to accomplish this goal have got started. Privatization includes various factors. In governmental economy, managers are not encouraged for optimized activity, gaining further profit and reducing costs. Besides, governmental firms’ loss does not lead to their bankruptcy. Rather, their

deficit is provided by budget. Here, governmental monopoly also emerges and no sector is encouraged to compete with other sectors. This is because all sectors are elements of the same set. They can get along well. Yet, with increasing market activity and weaker role of government in economy, competition will emerge or be intensified among them. Especially, after the end of privatization process and when the role of market in economy is duplicated, competition between firms will be intensified and then disruption and failure will bring about more destructive effects on market.

5. Speech III: Challenges Faced by Economic Competition Law

Compromise: The openness of trade competition accepted as a principle in competition law will be realized when individual is able to openly and freely take commercial actions in a healthy fair space.

This is in such market that consumers have the power to select and their rights will also be met. Hidden agreements and collusion may damage open and free flow of market and disrupt its natural movement. Alternatively, taking coordinated methods and correlated practical procedures are considered to be among acts disrupting competition.

6. Discussion II: Bases and Principles Dominant on the Council of Competition and Economic Policies

Competition Council – the only authority to meet non-competitive procedures – is formed to accomplish the objectives related to the facilitation and banning monopoly. It is required to start investigation on non-competitive procedures on its own or based on any (real or legal) person's complaint and make decision in the framework of Article 62 of Competition Facilitation Act.

Members' Composition and Condition: This council is composed of two judges from Supreme Bureau as selected and approved by the head of Iran's Judiciary, two prominent experts of economics suggested by minister of Treasury and Economic Affairs and the president's order, a prominent lawmaker familiar with economic law suggested by minister of Judiciary and the president's order, two trade experts suggested by minister of trade and president's order, an industry expert suggested by minister of Mine and Industry and president's order, a fundamental service expert proposed by the head of Management and Planning Organization and president's order, a financial affairs expert suggested by minister of Treasury and Economic Affairs and the president's order, a person selected by Iran's Chamber of Commerce,

Industries and Mines, and one selected by Central Chamber of Cooperation.

7. Speech I: Claim Damage in Economic Competition Market

Based on Article 67 of Competition Facilitation and Monopoly Ban Act, real and legal persons damaged by respective non-competitive procedures can claim petition to an authorized court for the compensation of these damages at last a year after the certainty time of competition council or revision board decisions regarding the implementation of non-competitive procedures. As well as meeting the regulations of this law, the court will pursue the petition if the plaintiff has annexed the copy of petition to the definite decision of competition council or revision board.

8. Speech II: Fines and Punishments Certificate of Falsehood: Based on

Article 73 of the act, anyone who make false claims to receive subject certificates or permissions or during the investigation of non-competitive procedures including interrogations and research and (or) avoid presenting documents and information which can affect competition council and revision board decisions as well as anyone who provides forged or false documents and evidences to revision board and National Center for Competition or (in)directly destroys, changes, or twists information or documents related to non-competitive procedures regardless of their framework will be sentenced to between three months and a year imprisonment or cash fine from Rls10 to Rls100 millions or both. If the presentation of forged and false documents or speech lead to the reception of respective certificates or permissions cited in this chapter, court, as applied, will order for the issued certificate or permission void as well as the above sentences. Similarly, based on Article 74, any expert or elite whose false testimonies or comments affect board and council's decisions will be sentenced to imprisonment for 1 to 3 years or cash fine from Rls30 to Rls300 millions or both. Besides, false testimony sentence cited in Islamic Punishment Law can also be used together with this sentence.

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