Iranian Competition Law: A Law and Economics Analysis in Light of General Principles of Competition Law

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ABSTRACT

The foundation of global market competition rests on the three principles of efficiency, market fairness, and economic integration. The success of domestic markets in effectively participating in this global competition depends significantly on the ability of their legal systems to promote these core principles. This study analyses the Iranian competition legal framework in light of these principles, employing insights from law and economics. The evaluation of this legal framework against efficiency and fairness suggests broad alignment. While a number of legal provisions need either clearer interpretation or amendment to ensure more consistent practical outcomes, this body of law seeks overall to uphold the requirements of fair competition and prohibit behaviours that undermine efficiency and fairness in the market. The situation is different with respect to alignment with economic integration. The integration of Iran's domestic markets into global markets is hindered more by policies that restrict openness to global markets than by shortcomings in the competition law. Achieving this integration requires a shift in Iran's macroeconomic policies towards the promotion of economic convergence.

Keywords: Efficiency, Fairness, Integration, Economic Convergence, Consumer Welfare, Fair Competition, Iranian Markets, Anticompetitive Practices, Monopolies, Collusion

1.Introduction

Competition law, as a branch of economic law, seeks to regulate market behaviour to ensure that markets function efficiently and fairly. The fundamental premise underlying competition law is that competitive markets, free from anti-competitive conduct, lead to optimal allocation of resources, lower prices, higher quality goods and services, and enhanced consumer welfare. In recent decades, competition law has evolved from a primarily American and European phenomenon to a global one, with jurisdictions around the world adopting competition regimes to govern their markets.

Iran's competition law journey presents a unique case study in the development of competition regimes in developing and transitional economies. The country's competition law framework emerged from a specific constitutional and political context—the adoption of the General Policies of Article 44 of the Constitution in 2005, which mandated the reduction of state ownership and the promotion of private sector participation in the economy. This constitutional shift was followed by the enactment of the Law on the Implementation of the General Policies of Article 44 of the Constitution in 2007, which constitutes the primary legislative source of Iranian competition law.

The present study employs a law and economics methodology to analyse the Iranian competition legal framework in light of three foundational principles of competition law: efficiency, fairness, and economic integration. Law and economics, as a field of inquiry, provides valuable analytical tools for evaluating the effectiveness of legal rules in achieving economic objectives. By applying economic reasoning to the analysis of legal rules, this approach enables a more nuanced understanding of the likely effects of competition law provisions on market behaviour, consumer welfare, and overall economic performance.

2. The Three Principles of Competition Law

2.1. Efficiency

Efficiency, in the economic sense, refers to the optimal allocation of resources to achieve the greatest possible output from given inputs. In the context of competition law, efficiency is typically understood to encompass allocative efficiency (the allocation of resources to their most valued uses), productive efficiency (the production of goods and services at the lowest possible cost), and dynamic efficiency (the rate of innovation and technological progress over time).

2.2. Fairness

Fairness in competition law relates to the equitable treatment of market participants and the prohibition of conduct that unfairly distorts competition. This principle is reflected in prohibitions against abuse of dominance, collusive behaviour, and other practices that undermine the competitive process. Fairness also has distributive dimensions, relating to the equitable distribution of economic benefits among market participants and consumers.

2.3. Economic Integration

Economic integration refers to the process of connecting domestic markets with the broader global economy. In the context of competition law, economic integration involves ensuring that domestic competition rules do not create unnecessary barriers to international trade and investment. Competition policy can play a role in facilitating economic integration by promoting market openness and preventing private anti-competitive conduct that impedes cross-border commerce.

3. The Iranian Competition Law Framework

3.1. Constitutional Foundations

The foundations of Iranian competition law can be traced to the Constitution of the Islamic Republic of Iran (1979). While the Constitution does not contain explicit competition law provisions, it establishes general principles relevant to economic regulation. The Constitution prohibits monopolies and emphasizes the importance of economic justice.

The most significant constitutional development for Iranian competition law came with the adoption of the General Policies of Article 44 of the Constitution in 2005. These policies, issued by the Supreme Leader, mandate the reduction of state ownership in economic activities, the transfer of state-owned enterprises to the private sector, and the promotion of competition.

3.2. The Law on the Implementation of the General Policies of Article 44 of the Constitution

The primary legislative source of Iranian competition law is the Law on the Implementation of the General Policies of Article 44 of the Constitution, enacted in 2007. Chapter Nine of this law is dedicated to competition regulation. The law prohibits anti-competitive agreements, abuse of dominance, and other conduct that restricts competition.

Key provisions of the law include:

Prohibition of collusive behaviour: The law prohibits agreements between competitors that restrict competition, including price-fixing, market allocation, and output limitation.

Prohibition of abuse of dominance: The law prohibits firms with dominant market positions from engaging in practices that abuse their market power, such as predatory pricing, discriminatory pricing, and exclusive dealing.

Merger control: The law establishes a notification and review system for mergers and acquisitions that may significantly affect competition.

Regulatory oversight: The Competition Council, established under the law, is responsible for enforcing the competition provisions and issuing regulations.

3.3. The Competition Council and the National Competition Center

The Competition Council is the primary competition authority in Iran. It is responsible for investigating anti-competitive conduct, reviewing mergers, and issuing binding decisions. The Council is supported by the National Competition Center, which provides research and administrative support.

The Council faces significant structural challenges, including a lack of independence from government influence, overlapping jurisdiction with sectoral regulators, and limited enforcement resources. These challenges have affected the Council's effectiveness in promoting competition.

4. Law and Economics Analysis of Iranian Competition Law

4.1. Efficiency Considerations

From an economic perspective, the Iranian competition law framework appears to be designed with efficiency objectives in mind. The prohibitions against collusion and abuse of dominance seek to prevent conduct that would reduce allocative and productive efficiency. By deterring anticompetitive practices, the law aims to promote consumer welfare through lower prices, higher quality, and greater innovation.

However, the implementation of the law has faced challenges that have limited its effectiveness in promoting efficiency. Key challenges include:

Government Intervention and Subsidies: The presence of extensive government subsidies and price controls has distorted the competitive environment, making it difficult for competition law to achieve its efficiency objectives. For example, in the automobile industry, government intervention has perpetuated oligopolistic structures that undermine competition.

Lack of Regulatory Independence: The Competition Council's lack of sufficient independence from government has hindered its ability to enforce competition rules effectively. When the regulator is subject to government influence, enforcement decisions may be driven by noneconomic considerations rather than efficiency objectives.

Weak Enforcement Mechanisms: The enforcement mechanisms available to the Competition Council are limited in their deterrent effect. Fines and other sanctions are often insufficient to deter anti-competitive conduct, particularly by large firms and state-owned enterprises.

4.2. Fairness Considerations

The Iranian competition law framework also reflects fairness considerations. The law explicitly prohibits conduct that would unfairly discriminate against competitors or exploit consumers.

Distributive Justice: Fairness in Iranian competition law can be understood as including distributive justice concerns. The law seeks to protect consumers and small businesses against the exercise of market power by dominant firms. In this sense, competition law serves as a tool for achieving more equitable outcomes in the economy.

Prohibition of Unfair Discrimination: The law prohibits dominant firms from engaging in discriminatory pricing or other practices that would place some competitors or consumers at a competitive disadvantage. This reflects a concern for procedural fairness in market relations.

Floating Prices and Commercial Custom: A recent decision by the General Board of the Court of Administrative Justice concerning floating prices in petrochemical contracts has raised important issues about the fairness of regulatory intervention in contractual freedom. The Court nullified Competition Council approvals regarding pricing of ancillary services, arguing that failure to determine the price at the time of concluding the contract leads to uncertainty. Critics argue that this decision ignores commercial custom regarding floating prices in long-term contracts and reflects a traditional reading inconsistent with contemporary commerce.

4.3. Economic Integration Considerations

The analysis of Iranian competition law's alignment with economic integration reveals significant limitations.

Restrictive Macroeconomic Policies: The integration of Iran's domestic markets into global markets is hindered more by policies that restrict openness to global markets than by shortcomings in competition law. Achieving this integration requires a shift in Iran's macroeconomic policies towards the promotion of economic convergence.

Trade Barriers: Import restrictions, tariffs, and non-tariff barriers limit the competitive pressure that international trade can exert on domestic firms. These barriers protect domestic incumbents from foreign competition, undermining the effectiveness of competition law in promoting competitive outcomes.

Sanctions and International Isolation: International sanctions have isolated Iran from global markets, limiting the ability of foreign firms to compete in the Iranian market. This isolation has reduced the competitive pressure on domestic firms, leading to higher prices and lower quality for consumers.

Limited International Cooperation: Iranian competition authorities have limited engagement with international competition networks and cooperation mechanisms. This limits the ability to address cross-border competition issues effectively.

5. Sectoral Studies: Automobile Industry and Ride-Hailing Platforms

5.1. Automobile Industry

The Iranian automobile industry provides a compelling case study of the challenges facing competition law in Iran. The industry is characterized by state-led oligopolies, with two dominant manufacturers—Iran Khodro and SAIPA—controlling the vast majority of production.

Regulatory Performance: The Competition Council has enacted twenty-two regulations aimed at curbing monopolistic practices and fostering competition within the car industry. However, the effectiveness of these regulations has been significantly impeded by the persistence of state-led oligopolies, governmental interference, and inherent structural constraints within the Council.

Government Intervention: The automobile industry has been subject to extensive government intervention, including price controls and import restrictions. This intervention has perpetuated the dominance of the two major manufacturers and limited the ability of new firms to enter the market.

Recommendations: The Competition Council's capacity to regulate the car manufacturing sector has been substantially undermined by excessive governmental involvement, the proliferation of oligopolistic dominance, and the lack of enough independence of the Council itself. To enhance regulatory performance, the complete withdrawal of government from the car manufacturing market, structural reforms to reinforce the independence of the Council, and amendments to Chapter 9 of the Law on the Implementation of the General Policies of Article 44 of the Constitution have been recommended.

5.2. Ride-Hailing Platforms

The regulation of ride-hailing platforms such as Snapp and Tap30 represents a more positive example of competition law enforcement in Iran.

Comparative Efficacy: The Council has demonstrated comparatively better efficacy in the regulation of the ride-hailing market because of enjoying more independence and lack of governmental interferences, notwithstanding considerable legal and economic hurdles.

Challenges: Despite its better performance, the Council's regulation of ride-hailing platforms faces considerable hurdles. The Council has considered allegations of predatory pricing by internet ridehailing systems and has addressed issues relating to collusion and abuse of dominance in this sector.

Lessons: The experience of regulating the ride-hailing market offers lessons for competition law enforcement in other sectors. Greater regulatory independence and the absence of governmental intervention are key factors in effective competition enforcement.

6. Institutional and Structural Challenges

6.1. Independence of the Competition Council

The independence of the Competition Council is a critical factor in the effectiveness of Iranian competition law enforcement. The Council's lack of sufficient independence from government has hindered its ability to enforce competition rules effectively.

Political Influence: The Council's decisions are subject to political influence, particularly in politically sensitive sectors such as the automobile industry and petrochemicals. This influence can lead to enforcement decisions that are driven by non-economic considerations.

Funding and Resources: The Council's budget and resources are insufficient for effective enforcement. This limits the Council's ability to investigate anti-competitive conduct and pursue enforcement actions.

6.2. Institutional Fragmentation

Institutional fragmentation—between the Competition Council and sectoral regulators—generates structural inefficiencies. This fragmentation creates jurisdictional confusion and duplication of effort.

Overlapping Jurisdiction: The Competition Council's jurisdiction overlaps with that of sectoral regulators, particularly in sectors such as telecommunications, energy, and transportation. This creates uncertainty about which agency has authority to address competition issues.

Regulatory Sandbox: The absence of a regulatory sandbox for new businesses limits the ability of startups to innovate and compete. Regulatory sandboxes provide a controlled environment in which new business models can be tested without being subject to all existing regulations.

6.3. Legal Framework Deficiencies

The legal framework for competition law in Iran has deficiencies that limit its effectiveness.

Traditional Interpretation of Legal Concepts: The courts have sometimes interpreted legal concepts in a traditional manner inconsistent with contemporary commercial realities. For example, the Court of Administrative Justice's decision on floating prices reflects a traditional understanding of price certainty that ignores the realities of modern commerce.

Unclear Provisions: Some provisions of the competition law need either clearer interpretation or amendment to ensure more consistent practical outcomes. This creates uncertainty for businesses and makes enforcement more difficult.

7. Comparative Analysis with International Frameworks

7.1. Comparison with EU Competition Law

The Iranian competition law framework differs significantly from the European Union competition law framework in several respects.

Regulatory Independence: EU competition authorities operate with a high degree of independence from political influence. In contrast, Iranian competition authorities lack sufficient independence.

Enforcement Mechanisms: EU competition law provides for more robust enforcement mechanisms, including higher fines, broader investigative powers, and more effective remedies.

Economic Integration: EU competition law is closely linked to the objective of economic integration. In contrast, Iranian competition law does not directly address economic integration objectives.

Predatory Pricing: The European Union offers a comprehensive framework for predatory pricing, including a clear definition, detailed identification criteria, centralized authority under the Competition Commission, and remedies combining financial, behavioural, and structural measures.

7.2. Comparison with US Antitrust Law

The Iranian competition law framework also differs from US antitrust law in important respects.

Consumer Welfare Standard: US antitrust law has explicitly prioritized consumer welfare as its paramount goal, relegating distributive justice to an indirect and secondary status. In contrast, Iranian competition law appears more concerned with distributive justice and fairness.

Private Enforcement: US antitrust law provides for robust private enforcement, including treble damages and attorney's fees. Iranian competition law provides limited scope for private enforcement.

Merger Review: US antitrust law provides for more rigorous merger review, with the federal antitrust agencies subjecting mergers to detailed economic analysis.

7.3. Implications for Reform

- The comparative analysis suggests that Iranian competition law could benefit from reforms in the following areas:
- Enhanced Independence: The Competition Council should be granted greater institutional independence from government influence.
- Strengthened Enforcement Mechanisms: The sanctions and remedies available to the Council should be strengthened to enhance deterrence.
- Legal Framework Reform: The legal framework should be clarified to address uncertainties and provide clearer guidance to businesses.
- Economic Integration: Iranian competition policy should be aligned with broader objectives of economic integration.

8. Conclusion

This study has analysed the Iranian competition legal framework in light of the three principles of efficiency, fairness, and economic integration. The analysis reveals a mixed picture of alignment with these foundational principles.

The Iranian competition law framework appears to be broadly aligned with the principles of efficiency and fairness. The law's provisions prohibiting collusion, abuse of dominance, and other anti-competitive conduct are consistent with the objectives of promoting efficiency and fairness in markets. However, the implementation of the law has faced challenges, including government intervention, regulatory independence, and enforcement weaknesses. These challenges have limited the law's effectiveness in achieving its objectives.

The situation is different with respect to alignment with economic integration. The integration of Iran's domestic markets into global markets is hindered more by policies that restrict openness to global markets than by shortcomings in competition law. Achieving this integration requires a shift in Iran's macroeconomic policies towards the promotion of economic convergence.

The findings of this study have important implications for policy and reform. The following recommendations emerge:

Legislative Reform: The competition law framework should be clarified and strengthened. The legal framework for predatory pricing, for example, should be amended to provide a clear definition and effective enforcement mechanisms.

Institutional Independence: The Competition Council should be granted greater institutional independence from government influence. This includes independent funding, political autonomy, and secure tenure for decision-makers.

Reduction of Government Intervention: The government should reduce its intervention in markets, including price controls and import restrictions that undermine competition.

Enhanced Enforcement: The sanctions and remedies available under competition law should be strengthened to enhance deterrence and ensure effective enforcement.

Clarification of Legal Concepts: Courts and competition authorities should adopt interpretations of legal concepts consistent with contemporary commercial realities.

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