

Comparative Study and Economic Analysis of the Competition Law in the Legal System of United Kingdom and Iran

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To cite this article:

Nastaran Sharifan, Niloofer Kazemi Rahim Abadi, Hasan Badini. Comparative Study and Economic Analysis of the Competition Law in the Legal System of United Kingdom and Iran. *International Journal of Economics, Finance and Management Sciences*.

Vol. 4, No. 1, 2015, pp. 31-34. doi: 10.11648/j.ijefm.20160401.15

Abstract: Competition law is referred to as one of the requirements and factors affecting the success of free market economic system. It is assumed that a fair competition between those active in the field of production and distribution leads to economic efficiency and welfare increase. Although this new branch of law has raised interesting and far-reaching interdisciplinary topics among jurists and economists for a long time, the Iranian legal system has recently taken the first steps in this field. Therefore, it is essential to prepare arrangements and formulate the fundamental principles in this area.

Keywords: Competition Law, Economic Analysis, Legal System

1. Introduction

With the collapse of the Soviet Union in the last decade of the twentieth century, the inefficiency of the socialist systems is indubitable. Hence, most of communist countries abandoned it and moved towards capitalism and free market economy. Nevertheless, privatization, trade liberalization and adoption of private property of individuals were not the end of the road. Historical experience of United States of America, particularly in the late nineteenth century, proved that if the market is left to its own and the state is not allowed to interfere in it at all, contrary to Adam Smith Beliefs, "invisible hand" does not work properly and cannot lead self-interest towards general interest and coordinate with it. The competition makes those active in the field of production and distribution of goods and services keep thinking about their survival in the market and make plans to improve their position in the market and surpass their competitors or at least do not drop behind them. Economic logic suggests that survival and increase of market share will not be achieved unless they have the highest possible production with the least resources and the lowest cost (production efficiency). They should also determine the lowest possible price compared to the competitors and produce the goods exactly according to the market demand to avoid loss of resources (allocative efficiency). In addition, in order to attract more

customers, they should always look for production of new and superior products and to do this, they should be innovative and creative (dynamic efficiency). Such competition is quite beneficial for consumers, because they have right to choose from among similar products marketed by different producers and they are able to choose the best product by spending the lowest cost. Thus, competition improves the welfare of consumers and producers and thus the overall welfare. That's why competition is regarded as the blood in the economic veins of a country.

Changing the overall economic policies in Iran, competition laws and regulations was included for the first time in the ninth chapter of the "Law on Amendment of Articles of 4th Economic, Social and Cultural Development Plan of the Islamic Republic of Iran and Implementation of General Policies of Principle (44) of the Constitution" of The Expediency Discernment Council of the System. The regulations are adopted from the bill prepared in 2004 by the Ministry of Commerce as "the regulations to facilitate the competition and the rules relating to control of and prevention from the formation of Monopoly" and submitted to Parliament after minor modifications in State Board of Administration in August 2005. Finally, this paper aims to comparatively examine the competition law in Iran and Britain, its appearance and dimensions from the past to the present and to evaluate its benefits in these two economic systems.

2. The Concept of Competition Law

Competition lexically means expectation. The same meaning of competition is also desired in the term "competition law" and "trade competition", because in the market environment, any actor watches its trade competitor and monitors their activities carefully so as not to get defeated by them and not to be made leave the market losing their business. Britain's Competition Commission has defined competition as "The process of conflict and disputes between firms to win business and trade with customers during a certain period of time". It appears that it is legally sufficient for jurists to know competition in the market as "the process of debate and superiority among independent enterprises in order to achieve a particular business goal, such as attracting more customers for their products and gaining more profits and market share". The question of what is the characteristics, nature and contexts of this process from an economic point of view should be left to economics and its experts. From this aspect, competition is a relationship which consciously or automatically arises in the absence of obstacles between a number of firms that are selling or supplying similar goods and services at the same time in a given market. Every time a firm decides to supply its goods or services on the market using its production or distribution power, it inevitably gets exposed to conflict with other active firms in the market [1]. Obviously, if the debate and conflict occurs at a more liberal and abuse-free environment, it will lead to better results.

3. History of Competition Law

Competition law is considered a new area of law which has grown substantially in recent years, especially since the early 1990s, and its importance has become clear to everyone more than ever. This growth and development has occurred in different aspects including geographical aspect, so that although in the early twentieth century America was the only country with regulations protecting competition, but today, these regulations have been adopted in at least 100 countries and many other countries are about to adopt them.

Competition law has also had considerable influence in the field of economic activities, because since the beginning of the last century, the economic activities covered by it were gradually increased. Currently, the scope of competition law encompasses all economic activities, even those activities that were once considered natural monopolies or those which could be imagined only in the realm of state power, such as telecommunications, energy, transportation, broadcasting or postal services [2]. In Britain, before the Norman Conquest in 1066, there were some rules on the control of monopolies and restrictive procedures. For instance, inflation and raising prices before supplying the good to the market was one of the three actions that allowed the king to confiscate property of the committed. In the Great Charter (Magna Carta) issued by King John I in 1215, all monopolies were declared illegal because of their adverse effects on individual liberties. In the

era of Henry III in 1266, a law was enacted to entrust a special board with determining the price of bread and beer, as well as the price of corn. Violator of this law was fined and punished. In another law in the fourteenth century, those who outreached and raised the prices of goods before supplying the goods to the market were described as oppressors of the poor and the whole society, and the traitors to the country. In 1561, a system was emerged in Britain called "industrial Monopoly Licenses" whose function was the same as today's patent exploitation license. However this system was clearly abused by rulers and was applied only to maintain and grant concessions to specific individuals. In the second half of the sixteenth century, protests of members of parliament in the House of Commons to the procedure was increased and a bill was prepared to fight it which finally caused the Queen to approve the competency of Court of the United Kingdom in the abolition of the granted monopolies. Anyway, the laws on Britain's trade restrictions should be considered the father of modern competition law. Trade restrictions were developed in response to the lack of work and workers in the middle Ages, which was caused by outbreak of plague in Europe. These restrictions were simple agreements aimed at imposing restrictions and barriers to trade and business of one of the parties to the agreement. Laws on trade restrictions are mainly assumed as made by British judges who developed it on two principles: 1) the prohibition and absolute nullity of some agreements opposed to individual freedom and public interest, and 2) legality of some freedom-restricting agreements which were proved to be conventional or reasonable.

However, difference and disagreement were inevitable in the application of judges' interpretation in what are the trade restrictions that are fallen into the first group and which one of them is normal and reasonable in the second group. However, judicial procedure made clearer examples of each one over time.

4. Competition Law in Iran

In Iran, competition law in its modern form is not unprecedented like many other developing countries. However, in the atmosphere of Iran economy which has relied on investment, administration and limitless intervention of the government in the market for years and also, indifference which was sometimes observed in Iran's economic management system with respect to efficiency and optimal allocation of resources, lack of feeling of need for competition law was comprehensible. One of the main reasons that Iran turned to the state economy after the revolution can be the bad history the previous regimes left in Iran's economic management, which in turn, raised a sense of cynicism and distrust in constitution writers over the private sector. This distrust was shown in Article 44 of the constitution which confined most of important industries and economic sectors to the government monopoly and considered the role of the private sectors only a small contribution in the country's development process. War and

escaping managers could also be among other reasons for turning to this perspective. This Article explicitly suggested the reliance of Iran economic system on government planning, which is in obvious conflict with the market economy. Thus, the structure of Iran economy was developed based on state monopolies in many markets. Article 81 strictly prohibited concessions of development of companies and institutions dealing with commercial, industrial, agricultural, mining and service issues to foreigners, as a significant barrier to their access to Iran market. However, this trend has undergone major changes in recent years and it is not exaggeration if it is referred to as economic revolution of Iran. In short, this change can be attributed to the experimental disclosure of inefficiency and failure of the state economy to the great managers and planners, as well as staggering waste of resources and national wealth, bribery and financial corruption, unemployment and disability in employment, heavy financial burden imposing the economy and market intervention on the government on the one hand, and improvement of Iran conditions for economic takeoff specific to managers -at the highest level- to develop and allocate Iran resources optimally and attract foreign investment as well as get to know the causes of other countries' growth on the other hand. One of these growth causes is attenuating government and transferring its numerous administrative tasks to the private sector or in another word, privatization and development of free market.

Various types of trade competition:

1. Perfect competition

If perfect competition is prevailing in a market, competition in that market is at its highest level and there is no limiting factor. In other words, the competition level between firms is one hundred percent in such a market.

2. Partial monopoly or multipolar market

If perfect competition and perfect monopoly are on both sides of the market structure, what actually happens in the market is between these two poles. In fact, perfect competition and monopoly have most simple theoretical role models using which usefulness of more competition and harmfulness of more monopoly could be proved, and the utility of the structure prevailing in a given market could be determined in comparison with these two. Therefore, perfect competition model is regarded as the guide and starting point of most common analyses in competition law [3].

3. Workable competition

The impossibility of actualizing perfect competition conditions, confronted economic circles with this challenging question of although it is not possible to achieve the desired, could another economic model be defined which first can be actualized in practice, and second, the objectives of perfect competition could be achieved through it as far as possible. To this end, the theory of "workable competition" was presented in the mid-twentieth century which has tried to accept the limitations of perfect competition and actualize its rules as far as practically possible. "John Clark", American economist, proposed this theory in 1940 and argued that competitive policy of countries should seek to provide

conditions and background necessary for a workable competition rather than a perfect competition. He tried to know the maximum factors that could be realized in the real-world and create the closest condition to perfect competition and its welfare; the factors that choose the second best from among all the options.

4. Effective competition

Effective competition is referred to as the basis of European Union competition law. It is not only mentioned explicitly in some of EU provisions – without giving any definition- but it is also discussed and cited in most important judgments issued by the courts of Europe Union. This concept plays the role of standards and criteria through which legal actions could be distinguished from illegal actions. That is, in some areas of competition law, any action detrimental to effective competition is forbidden and otherwise, it is legitimate.

5. Monopolistic competition

Monopolistic competition market is among intermediate structures and should not be considered the same as perfect monopoly. In these markets, suppliers and buyers are numerous and price is not under control of any firm. Also, unlike monopolistic market, there are no (or few) entry and exit barriers. However, there is so much difference between products of the same type in terms of quality, appearance, specification, quantity, etc. That's why consumers consider each product unique and hence, competition in this market is imperfect and gets close to monopolistic mode. That is, using the difference between their products with that of rival, firms can use monopolistic-like condition at least in the short term. Thus, they would be able to increase their products' price to some extent without losing their customers.

5. United Kingdom Competition Law

United Kingdom (UK) competition law is a flexible instrument. With one exception, the legislation is based on the premise that each case should be judged by the actual effect which a practice has on competition and whether it is against the public interest. The public interest has a broad meaning and is not precisely defined in the legislation. UK competition law involves a range of legislation but at its core there are four principal Acts of Parliament, each dealing with a separate aspect of competition policy. *Fair Trading Act 1973* deals with mergers and abuses of monopoly power in a market. *Competition Act 1980* deals with anti-competitive practices by particular companies. *Restrictive Trade Practices Act 1976* deals with - agreements that restrict persons or companies from competing freely. *Resale Prices Act 1976* deals with attempts to impose minimum prices at which goods can be resold.

** Who is responsible for UK competition law?*

Enforcement of the law generally falls into the following stages:

- investigation;
- judging the merits of the case;
- recommending suitable remedies;

- deciding whether to implement the remedies; and
- Monitoring those remedies which are implemented.

Four principal bodies have interlocking responsibilities for enforcement.

- *The Director General of Fair Trading* is the independent head of the Office of Fair Trading (OFT), a non-ministerial government department concerned with competition issues. The Director General undertakes all initial investigations. If he has reason to believe that a competition problem exists, he may, either informally or formally (on behalf of the Secretary of State for Trade and Industry), seek to remedy it with the parties concerned. If that is not possible, he usually refers the matter for follow-up investigation by the Monopolies and Mergers Commission or action by the Restrictive Practices Court. For example, if, after his initial investigation into a merger, the Director General feels further action is required he will advise the Secretary of State either to accept undertakings or to make a reference to the Monopolies and Mergers Commission. The Director General has sole responsibility for monitoring any remedies.
- *The Monopolies and Mergers Commission (MMC)* is an independent tribunal that carries out investigations under the Fair Trading Act and Competition Act at the request of the Secretary of State or the Director General. It reports its findings and, if appropriate, recommends remedies to the Secretary of State.
- *The Restrictive Practices Court (the Court)* decides whether the restrictions in a registrable agreement are against the public interest. If the Court believes this is the case, it can strike down the restrictions. The Court can only act on agreements referred to it by the Director General.
- *The Secretary of State for Trade and Industry* does not have an investigatory role. He is mainly concerned with the final decision about whether enforcement action should be taken and what remedies should be implemented after investigations by the other bodies are completed. Agreement has to be reached on, for example, whether a particular merger should be referred to the MMC, and if so, whether it should be prohibited because it is against the public interest or allowed to go ahead on certain conditions.

The Secretary of State is the voice of competition policy in the Cabinet and has responsibility for appointing the Director General of Fair Trading and the members of the MMC.

** The purpose of competition policy*

Competition is an essential element in the efficient working of markets. It brings important benefits to the consumer by:

- Encouraging enterprise, innovation, efficiency and a widening of choice;
- Enabling consumers to buy the goods and services they want at the best possible price; and contributing to our national competitiveness.
- Competition policy seeks to encourage and improve the

competitive process, and to ensure consumers feel the benefits of that process. These aims are achieved in practice through competition law.

6. Conclusion

Dissolution of Soviet Union indicated the inefficiency of socialistic system. Therefore, the countries went toward competition-based capitalism; this factor as an objective reason showed the competition law as one of the requirements and effective factors in the success of economic systems. The goals of competition law depend on the economic, political, cultural and social conditions of any legal system and might be different from time to time or their order of priority will be changed as the result of changes in such conditions. However, the "spirit of competition law" is generally stable and consists of maintaining the competition to increase economic efficiency to the benefit of the consumers". Thus, the people who enforce the competition rules, in principle, shall analyze, interpret and execute such rules in this way. Considering the need of any society to its economy being competitive, the competitiveness rules were also established by the Expediency Council, as the general economic policies of the competitiveness rules changed. The United States was the only country, which had the laws protecting the competition; but there are now at least 100 countries where such laws have been approved and many other countries are presently formulating them. This suggests to the increasing significance of the issue in the world's economy.

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