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## An Introduction to Iranian Competition Law and Policy

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## I. INTRODUCTION

Competition law is attracting considerable interest in developing countries because of their desire for economic development and competitive markets. Few studies have been published about Iranian Competition Law and several comparative law studies have found that Iran does not have a competition law, competition authority, or the merger control regime. This perception is due to two reasons. The first is that, even though historically in Iranian law there had been some provisions regarding competition law and unfair competition, until 2007 Iran didn't have a competition act. The second reason is, notwithstanding the fact that Iran approved a competition law in 2007, this act was part of another act regarding privatization and remained hidden.

So this perception is false. This article presents the competition law provisions of Iran, especially the Act of the execution of the General Policies of article 44 of the Constitution (2007) (“the Act”), and uses a comparative study method. The European Union has one of the most valuable and practical competition laws in the world. Many countries, including Iran, have been inspired by European competition law and policy, and many acts are modeled upon European competition provisions. This article examines the similarities and differences between TFEU and the Act.

This article is divided into three sections. The first section gives a brief history of competition law in the Iranian legal system. The second section examines the general rules of the Act, including objectives, personal application, unilateral anticompetitive conducts, collective anticompetitive conducts, and mergers and acquisitions. In the third section, we examine the competition council—its role in Iranian competition law, members of the council, duties and authorities of the council, sanctions that council can impose—and the Retrial Board, which has been established to review the competition council decisions.

## II. THE HISTORY OF COMPETITION LAW IN THE IRANIAN LEGAL SYSTEM

Iran, like many other developing countries, until recently did not have a specific competition act. However, historically there were some provisions in different acts regarding competition law issues. Article 244(A) of the abrogated Penal Code of Iran<sup>2</sup> (1925), Articles 1<sup>3</sup>

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<sup>2</sup> “Unfair competition is forbidden and its perpetrator shall be punished by three to six months of imprisonment and payment of a fine of between 1000 rials and 5000 rials or one of these punishments.”

<sup>3</sup> “Any person who, without legal authority, intentionally or as a result of carelessness inflicts an injury or loss to body, health, property, freedom, dignity, commercial reputation or any other right created for individuals by law,

and 2<sup>4</sup> of the Civil Responsibility Act (1960), Article 64<sup>5</sup> of the Electronic Commerce Act (2003), Article 133 of the bill of amendment of commerce code<sup>6</sup> (1969), and the Paris Convention for the Protection of Industrial Property (1833) of which Iran is a member, are some examples of Iran's competition law provisions before 2007. However, most of these articles concerned unfair competition.

After the 1979 revolution and the eight-year war, the state-owned sector expanded rapidly. In this situation, there was no need for competition law. Further, the constitution that was adopted contained many critical views towards the private sector. According to article 44:

The economy of the Islamic Republic of Iran is to consist of three sectors: state, cooperative, and private, and is to be based on systematic and sound planning. The state sector is to include all large-scale and mother industries, foreign trade, major minerals, banking, insurance, power generation, dams and large scale irrigation networks, radio and television, post, telegraph and telephone services, aviation, shipping roads, railroads and the like; all these will be publicly owned and administered by the State. The Cooperative Sector is to include cooperative companies and enterprises concerned with production and distribution, in urban and rural areas, in accordance with Islamic criteria. The private sector consists of those activities concerned with agriculture, animal husbandry, industry, trade, and services that supplement the economic activities of the state and cooperative sectors. Ownership in each of these three sectors is protected by the laws of the Islamic Republic, as far as this ownership is in conformity with the other articles of this chapter, does not go beyond the bounds of Islamic law, contributes to the economic growth and progress of the country, and does not harm society. The [precise] scope of each of these sectors, as well as the regulations and conditions governing their operation, will be specified by law.

Article 43 of the Constitution also discusses competition law issues. This article presents impositions, including "The prohibition of infliction of harm and loss upon others, monopoly, hoarding, usury, and other illegitimate and evil practices..."

Article 81 of the Constitution is another example of a clear and strong tendency towards nationalization and the exclusion of foreign participation in the local economy.<sup>7</sup> It reads as follows: "The granting of concessions to foreigners for the formation of companies or institutions

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which causes tangible or intangible loss to another persons, shall be responsible for the payment of compensation for the damage arising out of his act."

<sup>4</sup> "Where the act of the party inflicting the injury or loss has resulted in either tangible or intangible damage to the injured party, the court, after trial and establishing the facts, shall issue a judgment against him to pay compensation for the said damage."

<sup>5</sup> "In order to protect legitimate and fair competitions in electronic transactions, illegal acquisition of trade or economic secrets of agencies and institutions or the disclosure of such secrets to third parties in electronic environment is deemed an offence and the offender will be sentenced according to this Law."

<sup>6</sup> "The directors and the managing director shall not be allowed to conclude transactions identical to the transactions of the company and which are considered to compete with the company. If any director, acting in contradiction of the purport of this article, inflicts a loss to the company by his violation, he shall be held responsible to indemnify the company's losses. The losses mentioned in this article purport actual losses incurred or reductions in profit."

<sup>7</sup> MAHER M. DABBAH, COMPETITION LAW AND POLICY IN THE MIDDLE EAST (2007).

dealing with commerce, industry, agriculture, services or mineral extraction, is absolutely forbidden.”

However, after many debates over the years among economists and lawyers about productivity and the efficiency of a state-dominated economy, Iran’s economic structure has begun to change and a privatization process has been initiated. Although there were privatization goals in the First Five-Year Development plan (1989-1993), until the Third Five-Year Development plan (2000-2004) the privatization process hadn’t been initiated. In this last plan, there were rules about state-owned enterprises, privatization (chapter 2), monopolies, and the promotion of competition in economic activities (chapter 4).

In 2004, The Expediency Council<sup>8</sup> offered a new interpretation of the Article 44 of the Constitution and the Supreme Leader approved it as a new policy.<sup>9</sup> This policy led to a law regarding privatization that also has some provisions about competition. The Act of “Execution of the General Policies of Article 44 of the Constitution” (“the Act”) was adopted in 2007.

### III. GENERAL RULES OF THE ACT

The Act was modeled upon EU competition law, although in some provisions there are major differences.

Understanding this Act is the key to understanding the current situation of the Iran's economy. The Act consists of ten chapters; chapter nine is devoted to competition law issues. Unlike other legal systems that keep competition acts as separate laws, competition rules in Iran are considered as part of the privatization act. These issues (privatization and competition) were combined in order to facilitate economic restructuring.<sup>10</sup>

It is remarkable, however, that the Iranian lawmakers did not consider the fact that, after completing the privatization process and assigning ownership of state-owned enterprises, the privatization act would be useless. Therefore, in the future, the Competition Council won’t be able to administer an applicable law.<sup>11</sup>

#### A. Objectives

The title of the ninth chapter is “facilitating competition and prohibiting monopoly.” The Act has two main objectives and other objectives (including consumer protection and efficiency) are generally considered to be secondary. But some researchers believe that efficiency is one of the main objectives of the competition policy of Iran.<sup>12</sup> In other provisions, Iranian lawmakers do regard efficiency as an objective.

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<sup>8</sup> Expediency Council was created in 1988. It works as a mediatory body when there is a dispute between Parliament and the Council of Guardians.

<sup>9</sup> H. RASTEGAR & A.OMIDVAR, IRAN PRIVITIZATION PERFORMANCE REPORT (2011).

<sup>10</sup> MEHDI RASHVAND BOUKANI, COMPETITION LAW IN FEGH, IRANIAN LAW AND EUROPEAN UNION LAW (2010).

<sup>11</sup> BEHNAM GHAFARI FARSANI, COMPETITION LAW AND ITS CIVIL REMEDIES (2014).

<sup>12</sup> M.H. Sadeghi Moghadam & B. Ghafari Farsani, *The Soul of Competition Law, A Comparative Study on Objectives of Competition Law*, 75(73) JUDICIARY’S L.J. 113-146 (2011); Boukani, *supra* note 10; S.M. Ghamami & M. Esmalee, *A Comparative Study OF Competition Law in Iran and France*, ISLAMIC L. RESEARCH J. (2010).

For example, consider the general policies of Article 44 of the Constitution of the Islamic Republic of Iran, which was endorsed in 2006 by the Leader of the Islamic Republic of Iran. These policies are intended to achieve the following objectives:

- Accelerated growth of the national economy;
- Promotion of a broad-based public ownership to achieve greater social justice;
- Enhancing the efficiency of economic enterprises and productivity of human and material resources and technology;
- Enhancing the competitive capability of the national economy;
- Reducing the financial and administrative burdens imposed on the government because of its controlling role in economic activities; and
- Increasing the general level of employment.<sup>13</sup>

In comparison with European Competition Law,<sup>14</sup> it seems that the consumer protection is not one of the main objectives of Iranian Competition Law.

### **B. Personal Application**

The first question when looking at the application of any competition law is: Who is bound by this law? Article 101 of the Treaty on the Functioning of the European Union (“TFEU”)<sup>15</sup> states that:

The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market...

Although the TFEU does not define “undertaking,” over the years the European Commission and European lawyers have defined this concept.<sup>16</sup> The European Commission has stated: “The functional concept of undertaking in Article 85 (1) covers any activity directed at trade in goods or services irrespective of the legal form of the undertaking and regardless of whether or not it is intended to earn profits.<sup>17</sup>”

Returning to Iran, Article 43 of the Act states that: “All legal and real entities from the public, government, cooperative and private sectors will be subject to articles of this chapter.” In Article 1 (4) of the Act, an entity is defined as an “economic unit involved in producing goods or providing services as that can be either a legal or natural person.”

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<sup>13</sup> *The general policies of the Article 44 of the Constitution of the Islamic Republic of Iran (2006)*, available at <http://www.en.ipo.ir/index.aspx?siteid=83&pageid=822> (last accessed Dec. 31, 2014).

<sup>14</sup> Jules Stuyck, *EC competition law after modernisation: More than ever in the interest of consumers*, 28(1) J. CONSUMER POL’Y, 1-30 (2005).

<sup>15</sup> *Official Journal*, 115, 09/05/2008 P. 0088 – 0089.

<sup>16</sup> DAVID VAUGHAN, *EU COMPETITION LAW: GENERAL PRINCIPLES* (2006).

<sup>17</sup> 89/536/EEC: Commission Decision of 15 September 1989 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.734 - Film purchases by German television stations) OJ L 284, 36-44 (3.10.1989).

However, this article excludes distribution entities without any reason. This could potentially lead to some problems. The first draft of the Act proposed by the Ministry of Commerce included distribution entities in the definition, but it was deleted later.<sup>18</sup>

One main issue in competition law is how to treat governmental-owned entities or governmental-linked companies, especially when they are lead players of a market and their monopolistic situation harms competition. Fortunately, governmental entities are not excluded from the scope of the Act, unlike in competition acts of other Middle Eastern countries (including Saudi Arabia, UAE, Qatar, and Iraq) that exclude governmental entities. However, although state-owned entities are within the scope of this Act, after eight years there are still major monopolies in different markets.<sup>19</sup>

Similar to the EU Commission's notice about its de minimis rule,<sup>20</sup> Article 50 of the Act follows a similar view as individuals who supply retail goods or services are excluded from the scope of this chapter. The article reads: "Guild members subject to the Guild Organization Act who are engaged in Small-scale supply (retail sale) of goods or services will be an exception to the chapter."<sup>21</sup>

### C. Unilateral Anticompetitive Conducts

The provisions governing unilateral anticompetitive conducts are found in Article 45 of the Act, which forbids "The following acts which hinder competition," including:

1. Hoarding and refusal to enter into transactions,
2. Discriminatory pricing,
3. Discrimination in trade conditions,
4. Aggressive price setting,
5. Misleading comments,
6. Forced sales or purchases,
7. Supplying substandard goods or services,
8. Intervening in the internal affairs or dealings with a rival company,

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<sup>18</sup> Mahmoud Bagheri & Behnam Ghafari Farsani, *The Scope of Application of Competition Law: Persons Covered by Rules*, 6517 IRANIAN J. TRADE STUDIES, 87-113 (2013).

<sup>19</sup> For example, in the automotive industry, few governmental or semi-governmental companies are active in the market. There were some privatization plans for offering the shares of these companies through the stock exchange. In 2010 18 percent of the shares of IranKhodro, one of the largest companies of the market, was offered through the stock exchange. The buyer of these shares was the cooperative organization of IranKhodro employees. Many accused the winner of collusion and the Competition Council wanted to investigate the validity of the transaction but the contract was canceled. Rastegar & Omidvar, *supra* note 9.

<sup>20</sup> Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice) (2014).

<sup>21</sup> The Act of amendment of Guild Organization Act (2013) requires retailers' commitments towards consumers. This act offers definitions for overcharging, dishonesty in dealing, hoarding, smuggled goods, not adopting pricing requirements, and not exercising hygienic and technical instructions. Specific bodies are established for the violation of the provisions of the act.

9. Abusing a dominant economic condition,
10. Restricting resale prices, and
11. Unauthorized professions, abusing information and positions of persons

Although Article 45 was modeled on Article 102 of the TFEU, there are major differences between them. The most important difference is the scope of the article. Article 102 states that: “Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.” The aim of Article 102 of TFEU is to prevent abusing a dominate position and protecting the market against firms with monopolistic market powers.<sup>22</sup>

Compared to Article 102 of TFEU, Article 45 of the Act contains limitations on special conduct of every entity in the market—not just entities which hold a dominate position. In this article, abuse of a dominate position is one example of a unilateral anticompetitive conduct.<sup>23</sup>

The first sentence of Article 45 defines: “The following acts which hinder competition.” Article 1 (20) defines this situation as “sabotage in competition:”

Sabotage in competition refers to the cases which lead to monopoly, hoarding, and economic corruption harming the public, centralization and the distribution of wealth by placing it at the disposal of certain people or specific groups, reducing skill and innovation in the community and/or permitting economic domination of foreigners over the country.

As we can see, Article 1(20) is not clear. Iranian lawyers and researchers have expressed many critical views towards Article 45. They believe that this article must be amended because it's against freedom of contracts, plus it changes the principles of civil law and contract law.<sup>24</sup> Article 45 also has some sections that are irrelevant to competition law e.g., section G, E and K—these sections relate to unfair competition.

#### ***D. Collective Anticompetitive Conducts***

In Article 44, The Act imposes provisions regarding collective anti-competitive conducts. This article defines collusion as a wide concept, including agreements. Article 44 does not differ between horizontal and vertical agreements, and it seems that it is the duty of the Competition Council to define these kinds of agreements.

Article 44 of the act reads as follows:

Any collusion among persons through (written, electronic, verbal or practical) contracts, agreements or accords resulting in one or multiple effects mentioned below that will obstruct competition is prohibited.”

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<sup>22</sup> FRANCESCO RUSSO, MAARTEN PIETER SCHINKEL, ANDREA GÜNSTER, & MARTIN CARREE, EUROPEAN COMMISSION DECISIONS ON COMPETITION: ECONOMIC PERSPECTIVES ON LANDMARK ANTITRUST AND MERGER CASES (2010).

<sup>23</sup> Reza Maboudi Neishabouri, *Discriminatory Contracts that Lead to the Distortion of Competition: A Comparative Study of the Iranian, U.S. and E.U. Legal Systems*, 20(3) ENCYCLOPEDIA OF ECONOMIC RIGHTS, 135-165 (2013).

<sup>24</sup> BEHNAM GHAFARI FARSANI, COMPETITION LAW AND ITS CIVIL REMEDIES (2014).

- Specifying prices for the purchase or sale of goods or services and the process of determining these prices in the market either directly or indirectly.
- Restricting or controlling the amount of production, purchase, or sale of goods or services in the market.
- Imposing discriminatory conditions in identical transactions with different trading partners.
- Having the trading party conclude a contract with a third party or dictating contract terms to them.
- Conditioning the conclusion of the contract on an acceptance of supplementary commitments by other parties that, based on trade norms, have nothing to do with the contract.
- Dividing or giving shares in the market for goods or services between two or more persons.
- Restricting market access of those not signatory to the contract, agreement, or accord.

Note—Contracts between workers’ or employers’ organizations to decide wages and benefits will be subject to the labor law.

Article 44 is modeled upon Article 101 of TFEU, although there are some differences between them. One of the differences is exemptions. In Article 101, there are exemptions as follows:

101(3): The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
  - impose on the undertakings concerned restrictions, which are not indispensable to the attainment of these objectives;
  - afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.”

Unlike Article 101, Article 44 of the Act doesn’t mention any exceptions and some researchers believe that omitting these makes this article imperfect.<sup>25</sup>

Another difference between the two articles is the concept of “concerted practices.” Article 44 does not talk about the concerted practices, unlike Article 101 of TFEU.

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<sup>25</sup> Boukani, *supra* note 10; M. Shams. Norouzi, *Collusion Between Undertaking in Perspective of The EU and Iranian Competition Law*, 14(56) IRANIAN J. TRADE STUDIES, 87-117 (2010).



### ***E. Mergers and Acquisitions***

Historically, competition authorities seek to control or prevent mergers and acquisitions that have a negative effect on competition and harm market activities. Competition provisions of many countries contain mandatory pre-merger systems. Competition authorities handle merger control in each country, e.g., in the European Union the Competition Directorate General of the European Commission as well as competition authorities in Member States have the power and duty of controlling mergers. The first attempt by the European Commission to enforce merger control in Europe was in the *Continental Can* in 1972. In 1989 the first “Merger Control Regulation” was approved. Since then, the European Commission has made over 3500 decisions regarding mergers.<sup>26</sup>

Iranian lawmakers define “undertaking” in Article 1 (4) and “company” in Article 1 (5).<sup>27</sup> Article 1 (16) prefers to use the term “company” instead of “undertaking.” This article reads as follows: “Merger is a process under which one or several companies do away with their legal personality to form a new entity or join other legal bodies.”

Article 48 of the Act defines clear provisions regarding mergers. Mergers are allowable; but, in exceptional circumstances, mergers need to be controlled by the competition authority. Article 48 prohibits the merger of companies or firms in the following cases:

- When prices of goods or services increase unconventionally as a result of the merger.
- When the merger will lead to extreme centralization of the market.
- When the merger will lead to the establishment of a controlling firm or company in the market.

Note 1– Mergers will be allowed when the merger is the only way to prevent firms and companies from ceasing activity or maintaining their access to technical know-how, even though the merger will result in paragraphs (3) and (4) of this article.

Note 2- The scope of extreme centralization will be specified and announced by the Competition Council.”

The Act does not define acquisition. According to Article 47, “No legal or real entity will be authorized to own capital or share of other companies or firms in a way that would hinder competition in one and/or more markets.” However, there are some exceptions:

- Ownership of shares or capitals by a broker or the like that is engaged in the purchase and sale of notary bonds. This will be in effect as long as s/he has not used the voting rights of their shares to hamper competition.
- Enjoying or securing mortgage rights of shares and capital of companies and firms active in a market for a good or service on condition that possession will not lead to owning voting rights in companies or firms.

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<sup>26</sup> Russo, et al., *supra* note 22.

<sup>27</sup> “Company” is a legal person set up on the basis of trade law or special applicable law.

- If share or capital is owned under emergency situations, on condition that the Competition Council is informed of the issue within one month from the ownership and that ownership will not be maintained longer than the time limit set by the Council.”

Article 49 of the Act stipulates that:

Firms and companies can ask the Competition Council whether their actions are subject to articles (47) and (48). The Competition Council will have the responsibility to investigate the cases within a maximum of one month from receipt of due request(s) and inform the applicant of the result in a written way or by sending a reliable message. If the inquiry related actions that are announced that are not subject to articles (47) and (48) and if no response is received from the Competition Council within the specified time, the actions will be deemed proper.

The Act, in Article 49, uses the verb “can” instead of “shall.” This means that asking the Competition Council for clearance is not mandatory; therefore Iranian competition law has a voluntary regime of merger control. Some researchers believe that when notification is mandatory, it is more efficient.<sup>28</sup>

Finally, whereas in other legal systems mergers and acquisitions are under the same control regime, Iranian competition law has two different approaches towards mergers and acquisitions without any specific reason.

#### IV. COMPETITION COUNCIL

Under Article 53 of the Act (2007), a Competition Council was formed to achieve the objectives of chapter nine of the Act. The creation of this council is one of the major developments in the history of competition law in Iran, although some concerns still exist.

One of the major concerns about the Competition Council is the problem of independence. Many believe that “the most effective bodies for the enforcement of competition law are autonomous and the quasi-autonomous ones that are independent from the government.”<sup>29</sup>

Although Iranian law stipulates that the Competition Council is to be independent, according to UNCTAD, “any assessment of the independence of the competition authorities must necessarily consider both de facto independence (what competition exists in reality) and de jure independence (what is reflected in the statutes).”<sup>30</sup> The Competition Council is not really an independent body as it is semi- governmental e.g., the budget of the Council is provided by the government and the president of the council is changed after the presidential election. According to the OECD rules, these are negative points regarding independence of a Competition Council.<sup>31</sup>

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<sup>28</sup> ELENA CARLETTI, PHILIPP HARTMANN, & STEVEN ONGENA, *THE ECONOMIC IMPACT OF MERGER CONTROL: WHAT IS SPECIAL ABOUT BANKING?* (2007).

<sup>29</sup> UNCTAD, *INDEPENDENCE AND ACCOUNTABILITY OF COMPETITION AUTHORITIES* (2008).

<sup>30</sup> *Id.* at 4.

<sup>31</sup> Tay-Cheng Ma, *Competition authority independence, antitrust effectiveness, and institutions*, 30(3) INT’L REV. L. & ECON., 226-235 (2010); DAVOUD HADIFAR, *LEGAL REGULATORY AGENCIES* (2009).

### **A. Members**

Article 53 of the Act imposes some provisions regarding the composition and the conditions of selecting members, as follows:

- Three members of parliament from the economic, programs and budgets, and calculations sections of the Industries and Mines Commissions; one person from each of these are selected as observers by the Islamic Parliament.
- Two judges from the Supreme Court, as selected by the Chief of Judiciary.
- Two prominent economic experts, as proposed by the Minister of Economic Affairs and Finance and by the President's decree.
- A prominent lawyer familiar with the economic rights, as proposed by the Minister of Justice and by the President's decree.
- Two experts in trade, as proposed by the Minister of Commerce and by the President's decree.
- One expert in industry, as proposed by the Minister of Industries and Mines and by the President's decree.
- One expert in infrastructure services, as proposed by the President of Management and Planning organization and the President's decree.
- A finance expert, as proposed by the Minister of Economic Affairs and Finance and by the President's decree.
- One person selected by the Iranian Chamber of Commerce, Industries and Mines.
- One person selected by the Islamic Republic of Iran Central Chamber of Cooperatives.

According to the Article 53:

The president of the council is selected among the economic experts of the council. After proposing by the council members, he/she is appointed by President's decree. Members of the Competition Council must have Iranian citizenship and be at least 40 years old. Having a valid doctorate degree for the experts in law and economics and at least a bachelor degree for the experts in commerce, industry, financial and infrastructure services is required.

“Not having convictions mentioned in Article (62) of the Islamic Penal Code or definite convictions to the bankruptcy to the fault or fraud” is also another condition stated in Article 53. “Having at least ten years of useful and relevant work experience and not having definite police records” are other requirements for becoming a member in Competition Council.

### **B. Duties and Authorities**

According to Article 58 of the Act, the Competition Council, in addition to the points mentioned above, has the following duties and authority:

- Identification of instances of anti-competition procedures and exemptions covered by this law and making decisions on exemptions as mentioned in the law;

- Assessment of conditions and specifying boundaries of goods and services markets in connection with articles 44 to 48;
- Providing consultation to the government to draw up necessary bills; and
- Ratification of guidelines on price adjustments, amounts, and conditions of access to monopolized markets of goods and services, in each case in line with related regulations.

Article 60 of the Act also stipulates some provisions regarding the authority of the Competition Council for inspection and research.

The Competition Council in Iran is a newly established authority. Because of the ambiguities of the Act and differences regarding the interpretation of these provisions, some problems in defining the power and duties of the Council still exist.

Beside the Competition Council, there are some sectoral regulators—such as The Communications Regulatory Authority—that have specific duties according to the relevant provisions. In recent years, these regulators and Competition Council have been involved in some legal disputes.

### **C. Sanctions**

It is crucial to note that, in comparison with some countries where the competition authority does not have power to impose fines, Competition Council is empowered to autonomously impose fines and other remedies for infringements of competition law. According to the Article 61 of the Act, “If the Council proves after receipt of complaints or conclusion of necessary investigation that one or more than one case of anti-competition procedures per articles (44) and (48) of this law have been enforced by a firm, it can make one or more than one of the following decisions:

- Order cancellation of any contract, agreement, and understanding that incorporate anti-competition procedures per articles (44) to (48) of this law.
- Order the parties reaching accord or relevant accords to stop continuing intended anti-competition procedures.
- Order the stoppage of any anti-competition procedures and their repetition.
- Order general information dissemination in order to make market more transparent.
- Order the removal of directors that have been elected contrary to regulations of Article (46) of this law.
- Order ceding shares or capital of firms or companies secured contrary to Article (47) of this law.
- Mandating suspension or ordering annulment of any sort of merger deemed contrary to Article (48) of this law or mandating the disintegration of the merged companies.
- Order the return of extra income or confiscation of properties secured through anti-competition procedures per articles (44) to (48) of this law as determined by competent judicial experts.

- Order the firm or company not to be active in any specific field or region or special region.
- Order the amendment of corporate by-laws or notes of the general assemblies or board of directors of companies, or require the government to amend the articles of association of public sector companies and institutions.
- Mandate firms and companies to observe minimum supply levels or price ranges under monopolized conditions.
- Set a cash penalty of ten million rials (10,000,000) up to one billion rials (1,000,000,000) in cases of violation of prohibitions envisioned in Article (45) of this law.”

Iranian law prefers to use “cancellation” instead of “voiding” without specific reason. “Cancellation” usually is used for contracts, while for agreements and understandings it seems that “voiding” is preferable. Furthermore, according to the Iranian Civil Code, a void contract is invalid from the outset; however, cancelling the contract doesn’t have such the same effect.<sup>32</sup>

#### **D. Retrial Board**

According to the Article 63 of the Act “Based on Article (61), decisions of the Competition Council can be reviewed within 20 days from the notification to the beneficiary as per Article (64) of the law. The period will be two months for those living abroad. In cases where the decision is not reviewed in the period under study and in cases where the Council’s decisions are not confirmed by the Retrial Board, the decisions will be final. In cases where the Council’s decisions are deemed generally in the view of the Council, they shall be published in one of the mass circulated dailies with the losing party bearing the expense once they become final.”

Article 64 also imposes some provisions regarding the location, the composition, the conditions of elections, and the type of decisions made by the board:

The board is located in Tehran. The Retrial Board consists of three judges appointed by a decree by the Judiciary Chief. They are the State Supreme Court judges. Two economic experts proposed by the Minister of Economic Affairs and Finance, and two commercial, industrial and infrastructural affairs experts jointly proposed by ministers of Industries and Mines and Commerce, are the other members of The Retrial Board. Members of the Retrial Board should have at least 15 years of experience in a related field. Decisions of the Retrial Board will depend on majority members’ approval but the Retrial Board’s verdict on decisions relating to Article (61) of the Act will be effective with the consent of at least two of the judges of the Board.

According to the Article 63-3(C), “The Retrial Board can reject the Council’s decisions or accept them as they are or make them lenient or amend them if required or make other decisions independently.” As article 64-3(D) stipulates, “the Retrial Board decisions will be final and binding.”

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<sup>32</sup> Boukani, *supra* note 10.

As we mentioned above, only the Competition Council's decisions based on the article 61 are reviewable. It seems that the Retrial Board and Competition Council are quasi-judicial bodies and do not follow the mandatory procedural requirements of the courts.

One of the most important concerns about the Act is that the Iranian law does not anticipate a judicial control mechanism over Council decisions. In some countries, judicial review is a very strict control over the decisions of a competition authority. We believe that the structure of Retrial Board is ambiguous and the Act should be amended to enforce competition law efficiently.

## V. CONCLUSION

The evidence from this study suggests that, although there are some problems regarding the enforcement of competition rules in Iran, having a competition law and policy is a big step for a developing country. Compared with the European Union, with its long history of competition law, there are some challenges in enforcing competition law in Iran. Some of these challenges are as follows:

- The Competition Act in Iran is a part of the privatization act, but after completing the privatization process, the privatization act will be useless. Having a separate competition act is preferable; therefore, the Iranian competition provisions need to be amended.
- The objectives of the ninth chapter of the Act are “facilitating competition and prohibiting monopoly.” According to Iranian lawyers, efficiency should be an additional goal of competition law. Consumer protection is not one of the main objectives of Iranian competition law.
- Article 1(4) of the Act defines an entity as an “economic unit involved in producing goods or providing services, which can be either a legal or natural person.” This article excludes distribution entities without any specific reason.
- In comparison with other Middle Eastern countries, the Iranian competition act seems more efficient because government entities are not excluded from the scope of the Act.
- Compared to the article 102 of TFEU, Article 45 of the Act contains limitations on special conduct of every entity who holds a dominate position. The approach offered by Article 102 of the TFEU is preferable.
- Article 44 of the Act is modeled upon Article 101 of TFEU; however, Article 44 does not mention the same exceptions, which makes this article imperfect.
- Because of using the verb “can” instead of “shall” in Article 49, we can say that Iranian competition law has a voluntary regime of merger control. This approach needs to be amended because a mandatory regime is more efficient.
- Because of some factors such as its budget and members, it seems that the Competition Council is a semi-governmental body; however, the Act stipulates that the Competition Council is independent.
- The Act does not anticipate a judicial control mechanism over the Council's decisions but there is a Retrial Board for reviewing some decisions of the Competition Council.