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A Comparative Study of the Legal Framework of Competition Law in Iran and Malaysia

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Abstract
Competition law is a regulatory tool aimed at enhancing market efficiency and consumer welfare in a free economy. As a core pillar of the market system, it helps prevent anti-competitive conduct, improves production quality, and ensures fair distribution of wealth. In its absence—or when ineffective—economic efficiency declines, market fairness weakens, and small enterprises face significant disadvantages. This can lead to the collapse of producers and distributors, and the violation of consumer rights. To address such challenges, competition law establishes a framework that promotes fair competition, deters anti-competitive agreements and practices, and supports both economic entities and consumer rights. This article compares the competition law systems of Malaysia (2010) and Iran (2008), with a focus on addressing Iran's legal gaps in this field. Given the relatively recent development of competition law in Iran, the study explores relevant aspects of Malaysia's more established framework as a model for potential reforms.

Keywords: Competition law, market, anti-competitive behavior, producers, consumers

Introduction

Competition law is the body of law that governs all enterprises influencing market conditions and regulates their relationships within the market. A large enterprise may exploit its power and dominance to restrict the entry of other firms into the market. To regulate such conduct and control anti-competitive practices, a coherent competition law is required. In other words, competition law is a set of solid principles and rules designed to prevent the distortion of market structures into monopolies, to improve market performance, and, at the same time, to foster healthy competition, eliminate unethical and unfair commercial practices among enterprises, and ultimately enhance consumer satisfaction. Able to create a coherent and advanced set of principles, rules, and unique policies aimed at preventing and penalizing anti-competitive behaviors. This has facilitated free and healthy competition in commercial and economic activities and provided a suitable framework for the development of competition among economic actors.

In the United States, the Sherman Act is considered one of the oldest laws related to competition law and has played an important role in the evolution of competition law in the country. The drafters of the Sherman Act traced its roots to the U.S. common law system. The Sherman Act, enacted in 1890, was primarily designed to limit competition in U.S. markets. It prohibited companies from entering into agreements that would create negative competition or restrict market competition (Legal Service India, n.d).

The factors leading to the enforcement of the Sherman Act included the concentration of wealth, rapid industrialization, and the accumulation of wealth in the hands of large companies. At that time, many corporations and institutions, such as railroads, oil companies, and tobacco companies, which were overly powerful and in a dominant position to influence the market, had created monopolies (Legal Service India, n.d). This situation led the public, legislators, and other competitors to increasingly feel the need for regulation to control these markets, which ultimately prompted Congress to introduce, draft, and enact this law.

The main objective of this act was to dismantle negative competition in the market. Section 1 of the Act refers to agreements that result in the restriction of trade (Sherman Antitrust Act, 1890, Section 1). Section 2 of the Sherman Act deals with monopolies. There were gaps in the

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Sherman Act that could not address the existing problems in market competition law (Sherman Antitrust Act, 1890, Chapter 2). Therefore, in 1914, the U.S. Congress enacted the Clayton Act and the Federal Trade Commission Act. Around the same time, companies began merging and adjusting prices and production, which led to price increases due to mergers and created a different form of monopoly, negatively affecting consumers (Legal Service India, n.d).

Consequently, the Clayton Act was implemented to protect consumers from high costs by regulating all corporate mergers. Additionally, in 1914, Congress established an administrative body through the Federal Trade Commission Act. This body is tasked with protecting consumers from unfair, deceptive, and fraudulent practices and has the authority to investigate companies or individuals suspected of engaging in unfair business practices (Federal Trade Commission Act, 1914).

It should be noted that the Clayton Act was amended in 1936 and 1950, followed by the Robinson-Patman Act of 1936, which prohibited specific forms of price discrimination (Robinson-Patman Act, 1936). Later, the Celler-Kefauver Act of 1950 addressed certain gaps in anti-merger regulations concerning asset acquisitions (Celler-Kefauver Act, 1950). Subsequently, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 was enacted, playing a significant role in the evolution of U.S. antitrust law (Hart-Scott-Rodino Antitrust Improvements Act, 1976).

In Europe, competition law is divided into two sections: the first concerns member states and the law's impact on them, while the second regulates transactions between member states in terms of trade. The first competition law in this continent was related to the Treaty establishing the European Coal and Steel Community (ECSC) or the Treaty of Paris, signed in 1951 by France, Germany, Italy, the Netherlands, Belgium, and Luxembourg. At that time, these countries had created a commercial community among themselves (European Union (EU) competition law, n.d). The objectives of this treaty were to ensure equal opportunities for member states in coal and steel production, limit Germany's powers, and guarantee free and fair competition (Legal Service India, n.d).

Later, the member states felt the need for atomic energy regulations and a common market, which led to the Treaty establishing the European Economic Community in 1957, signed by all the Paris Treaty countries in Rome (Roth, The continual Evolution of Competition Law, 2019).

Important provisions of this treaty include Articles 85 and 86, which prohibit abuse of a dominant economic position and invalidate all agreements that prevent or restrict trade, thus undermining market competition and affecting trade between states (European Union, Articles 85 and 86 of the EEC Treaty). Later, this treaty was renamed the Treaty on the Functioning of the European Union (TFEU).

It should be noted that Article 101 of this treaty is one of the most important provisions concerning European competition law. It states that all agreements affecting trade between member states are prohibited and declares all anti-competitive agreements and decisions void. However, paragraph 3 of this article provides exemptions for prohibited contracts that create sufficient benefits and advantages relative to their restrictive effects (Article 101 of the TFEU – restrictive agreements).

Article 102 of the same treaty is also crucial in European competition law, addressing abuse of a dominant position, including rules on unfair purchase or sale prices, unfair trading conditions such as limiting production, imposing unequal terms on equivalent transactions with other business partners, and placing them at a competitive disadvantage (European Commission, 2014, Article 102 investigations, Competition Policy).

It should also be noted that specific and well-known cases of negative competition and anti-

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competitive behaviors were handled in European courts, and these cases contributed to the development of competition law in Europe (Valančius, 2017).

Principles and General Concepts

Clark defines competition as follows: "Competition is the contest in selling goods whereby each seller typically seeks to obtain the maximum net income. This contest or struggle is effectively limited by factors such as price, or the prices set by each seller, along with the buyer's freedom to choose to purchase the same goods from competing sellers. The right of choice causes each seller to try to offer a price at least equal to or more attractive than other competitors. Of course, to achieve this goal, there must be a sufficient number of sellers" (Samavati, 1995, p. 17).

Although this definition initially provides a general picture of competition, as we know, commercial law is a branch of law that focuses on specific subjects, and understanding the subject essentially means understanding the relevant rules and regulations. However, Clark's definition of competition is not entirely sufficient or precise.

Specifically, it does not capture the negative or restrictive aspects of competition law, which pertain to monopolies and illegal market dominance. Although such anti-competitive behaviors can also be explained in terms of seeking maximum gross income, Clark later considers the negative dimension of competition as well, describing it as conditions in which "no effective monopoly power exists and no buyer or seller has the power to set prices" (Office of Economic Studies, Ministry of Commerce, 2005, p. 28).

In any case, the definition in the Law on the Implementation of General Policies of Article 44 of the Constitution appears to be derived from Clark's perspective. Clause 11 and then 12 of this law define competition and monopoly, respectively, as follows: Competition refers to a market situation where a number of independent producers, buyers, and sellers operate to produce, buy, or sell goods or services, in such a way that none of the producers, buyers, or sellers has the power to set prices in the market, and there are no restrictions on market entry or exit. Monopoly, on the other hand, is a market condition where the share of one or several producers, buyers, or sellers in market supply and demand is sufficient to have the power to set prices or quantities in the market, or where entry or exit of new firms is restricted (Ghamami & Esmaeili, 2010, p. 157).

In Malaysia, according to the guidelines of the Malaysia Competition Commission, competition law is a set of laws designed to prevent market distortions arising from anti-competitive business conduct (Malaysia Competition Commission, 2012).

The purpose of competition law in Malaysia is to ensure a fair market for consumers and producers by prohibiting unethical practices aimed at obtaining a larger market share than would be possible through honest and fair competition. Anti-competitive practices not only hinder the entry or success of smaller firms or competitors but also result in higher prices for consumers, poorer services, and reduced innovation. Therefore, according to the Malaysia Competition Commission, a key objective of competition law in the country is to protect free and fair competition in commercial markets for the benefit of consumer welfare, business efficiency, and overall economic development (Malaysia Competition Commission, MYCC).

It is worth noting that these objectives are reflected in the statements of Malaysian legislators in the Competition Act of 2010, which generally prohibits anti-competitive agreements, abuse of dominant position, and anti-competitive mergers (Malaysia Competition Act 2010).

In Iran, the objectives are not significantly different from Malaysia. The main goals of Iranian legislators are facilitating competition,

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preventing monopolies, and promoting economic efficiency.

Legal Sources

Primary Sources of Competition Law in Iran

Articles 37, 38, 40, and 41 of the Fourth Economic, Social, and Cultural Development Plan of the Islamic Republic of Iran, following planning aimed at creating a framework for rapid economic growth in interaction with the global economy, required the government, in Chapter Three entitled "Economic Competitiveness," to submit a bill on facilitating competition and controlling and preventing the formation of monopolies to the Islamic Consultative Assembly (Parliament) in the first year of the plan. The drafting of this bill, coinciding with structural changes in the economic system and reinterpretation of Article 44 of the Constitution, which prioritized a private economy, became part of the market regulation framework under the general policies of Article 44.

The bill on the general policies of Article 44 of the Constitution was officially received in the public session No. 321 of the Parliament on 9 May 2007 (19/2/1386 in the Iranian calendar), and its urgent consideration was approved on 15 May 2007 (25/2/1386). It was then referred to the special committee assigned to review the bill. On 10 August 2007 (20/5/1386), the special committee submitted its report to Parliament, and on 14 October 2007 (22/7/1386), it was reviewed in a public session. Two days later, on 16 October 2007 (24/7/1386), the bill was referred to the Guardian Council for examination (Ghamami & Esmaeili, 2010, p. 160).

The Guardian Council requested an extension from Parliament on 25 October 2007 (3/8/1386) and submitted its response on 7 November 2007 (16/8/1386). The special committee reviewed the bill on 6 December 2007 (15/9/1386) and addressed it in public session No. 388 on 23 December 2007 (2/10/1386). The bill was again referred to the Guardian Council on 24 December 2007 (3/10/1386), and the Guardian Council, on 3 January 2008 (13/10/1386), while requesting another extension, returned the bill with comments to Parliament on 14 January 2008 (24/10/1386). Considering the Council's objections, the bill was re-examined by the special committee on 22 January 2008 (3/11/1386), and after deliberation, on 28 January 2008 (8/11/1386) in public session No. 401, the committee insisted on the provisions in accordance with current needs and the necessity for national development and referred it to the Expediency Discernment Council (Ghamami & Esmaeili, 2010, p. 161).

Accordingly, the bill was submitted to the Expediency Discernment Council on 5 February 2008 (17/11/1386), and on 8 July 2008 (18/4/1387), the Council approved it. Finally, on 22 July 2008 (31/4/1387), the law was promulgated by the Speaker of the Islamic Consultative Assembly for implementation by the government.

Thus, despite the long legislative process, the law reached the government in just over a year. The government was tasked with implementing the law, primarily focusing on establishing the Competition Council, which is the main organ for ensuring market competition. After about a year from the enforceability of the law, the first informal session of the Competition Council was finally held on 28 July 2009 (7/5/1388) with the presence of the majority of its members, except representatives from the Vice-Presidency for Planning and Strategic Supervision, the Ministry of Industries and Mines, and the Chamber of Commerce (Ghamami & Esmaeili, 2010, p. 161).

Primary Sources of Competition Law in Malaysia

The legislative history of competition law in Malaysia dates back to the Competition Act 2010 and the Malaysia Competition Commission Act 2010. In addition to these laws, the guidelines issued by the Malaysia Competition Commission serve as a public reference on how the Commission interprets the Competition Act 2010.

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The Commission advises companies and economic entities to study these guidelines and conduct a self-assessment of their business practices, procedures, and management controls (Malaysia Competition Commission, 2012, May 2). These guidelines include:

1. Intellectual property rights and competition law
2. Anti-competitive agreements
3. Abuse of dominant position
4. Complaint procedures
5. Market definition
6. Financial penalties
7. Leniency and mitigation regimes

Since Malaysian law is largely based on the common law system, meaning that English law forms part of Malaysian law, prominent legal cases and precedents related to competition law in European courts, especially in the United Kingdom, also serve as legal references for Malaysian competition law (European Commission, 2014).

Anti-Competitive Behaviors

In legal terms, anti-competitive behaviors or unfair competition refer to fraudulent, misleading, or unfair practices that firms employ in their relations with each other or with consumers, in order to gain a larger market share for their products or reduce the market share and sales volume of competitors' products (Salimi, 2019, p. 20).

In this section, anti-competitive behaviors are briefly described under the legal systems of Iran and Malaysia. In both countries, anti-competitive behaviors are classified into four categories:

1. Horizontal agreements
2. Vertical agreements
3. Abuse of dominant market position
4. Mergers

Horizontal Agreements

Horizontal agreements refer to agreements in which the parties occupy a similar position in the supply chain of a product and engage in similar activities (Ghaffari Farsani, 2020, p. 305). In other words, agreements concluded between two or more firms operating at the same level of production and distribution of a related product are considered horizontal agreements (Ghaffari Farsani, 2020, p. 305).

In Iran, Articles 45 and 46 of the Law on Implementation of General Policies of Article 44 of the Constitution address interventions in market competition, isolating competitors, or fixing prices through methods such as joint investments, boycotts, geographic or product market allocation, creation of fictitious prices, and their stabilization, specifying some of these cases in detail.

Under the Malaysian Competition Act 2010, the prohibition of such agreements is outlined in Part 2, Chapter 1, Section 4 of the law (Malaysian Competition Act, 2010). According to this section, four types of horizontal agreements are identified:

1. Price-Fixing Agreements: In such agreements, parties directly or indirectly determine the price of their product or service and commit to maintaining it, either in a limited or unlimited manner (Ghaffari Farsani, 2020, p. 307).
2. Production-Control Agreements: In these agreements, competitors coordinate directly or indirectly to limit or control the quantity of production and supply to the market. This includes agreements regarding types of products, market access, and technical or technological investments.
3. Market-Sharing or Allocation Agreements: Competitors agree on their respective shares of a local, regional, national, or international market (Ghaffari Farsani, 2020, p. 332). In this type of agreement, the supply to the market is allocated, or markets are divided among the parties, and each firm is restricted to serve only its designated market (Ghaffari Farsani, 2020, p. 332).

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4. Collusion in Competitive Bidding: Such agreements occur in auctions or tenders, where participants agree in advance on who will submit the highest purchase bid or the lowest sales/service offer, and others commit not to underbid (Ghaffari Farsani, 2020, p. 333). Prices in competitive transactions are thus artificially determined under collusion.

Additionally, Section 4 of the Malaysian law notes that preventing others from accessing or participating in a market—such as forcing a third-party firm out, blocking a specific firm's market entry, or restricting trade with that firm—is considered a clear example of an anti-competitive agreement.

Vertical Agreements

Articles 45 and 46 of the Law on Implementation of General Policies of Article 44 of the Constitution address some forms of vertical agreements, such as contracts between a producer and a distributor (exclusive regional rights, non-sale to certain consumers, or setting a fixed price), and between a producer and a buyer (Ghamami & Esmaeili, 2010, p. 167).

Section 4, Chapter 1 of the Malaysian Competition Act also states that vertical agreements are considered anti-competitive agreements.

Vertical agreements are those agreements in which the parties occupy different levels in the supply chain (Ghaffari Farsani, 2020, p. 357). These agreements constitute a series of contracts designed to deliver a product from the stage of production to the consumers, whether or not any additional operations are performed on the product by intermediary firms (Ghaffari Farsani, 2020, p. 357).

In such agreements, one party is positioned closer to the consumers in the process of delivering the product. Any restriction arising from this agreement is considered a general anti-competitive agreement (Ghaffari Farsani, 2019)

Abuse of Dominant Market Position

Among all anti-competitive behaviors, abuse of a dominant market position is one of the most significant and can itself lead to other important anti-competitive behaviors. Therefore, not only is abusing a dominant position considered anti-competitive, but achieving such a position is also restricted, as it enables potential misuse. This is also the underlying rationale for prohibiting certain mergers, as they may result in the abuse of a dominant position (Ghamami & Esmaeili, 2010, p. 168).

A dominant firm in the market, whether a producer or distributor, is one that either has no significant competitors, is not subject to substantial competition, or holds a decisive position in the market. If two or more firms collectively hold such a position and do not compete in certain markets, they are considered to have joint dominance (Ghamami & Esmaeili, 2010, p. 169).

Such a dominant position inherently carries the potential for anti-competitive behavior and monopoly creation, and in specific circumstances, it is considered equivalent to a monopoly (Ghamami & Esmaeili, 2010, p. 169).

This dominance can arise from:

- Access to special information
- Legal or governmental privileges
- Market share
- Financial power
- Access to supply sources or sales markets
- Collusion or agreements with other firms
- Special advertising creating new consumer demand
- Legal or regulatory barriers for other competitors

To ensure the proper use of information and maintain competitive conditions, Article 74 of Iran's Fifth Five-Year Development Plan stipulates that for companies subject to privatization, all information regarding the continuity or potential changes of regulatory requirements must be disclosed prior to the

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transfer, according to the regulations of the Securities and Exchange Organization (Ghamami & Esmaeili, 2010, p. 169).

In Malaysian Competition Law

Abuse of dominant market position is addressed in Part 2, Chapter 2, Section 10(1) of the Malaysian Competition Act. The law explicitly states that abuse of dominance includes the following behaviors:

1. Imposing unfair conditions or prices
2. Limiting production, market access, or technical development
3. Creating explicit barriers to market entry
4. Denying access to the market
5. Using a dominant position in one market to gain advantage in another market

Cartels

Cartels are companies that operate in a specific field and, while maintaining their financial and legal independence, unite to reach agreements regarding market allocation, production volumes, and product prices. The primary goal of cartels is to dominate the market of a specific product by weakening or eliminating competition, thereby creating a monopoly.

Under Malaysian competition law, cartel activities are prohibited under Section 4 of the 2010 Competition Act**,** and any company engaging in cartel behavior may face financial penalties according to the guidelines of the Malaysian Competition Commission (Malaysia Competition Commission, 2014).

In Iranian law, the legislature has not explicitly addressed cartel behaviors, and this form of anti-competitive conduct remains unregulated.

Currently, in Malaysia, engaging in cartel activities under the 2010 Competition Act is not considered a criminal offense per se. However, obstruction of investigations by the Malaysian Competition Commission by cartels may lead to criminal liability (IP & Legal Filings, n.d.). The following actions are considered criminal offenses:

1. Refusal to provide access to documents during an investigation conducted by the Malaysian Competition Commission
2. Submission of false or misleading information, evidence, or documents
3. Destroying, hiding, or altering any evidence or documents with the intent to mislead the Malaysian Competition Commission or obstruct its investigations
4. Disclosing information about the investigation to other stakeholders in a way that impedes the investigation
5. Threatening retaliatory actions against individuals who report violations or cooperate with the Commission during investigations

Mergers

A merger occurs when two previously independent firms come under the ownership or control of a single entity (Ghaffari Farsani, 2019, p. 381). Such a merger results in a larger entity with greater competitive capacity (Farsani, 2019, p. 381). If this merger is carried out with the intention of eliminating competitors from the market or creating market concentration that reaches a level of monopoly, it constitutes an anti-competitive behavior (Ghaffari Farsani, 2019, p. 381).

In Iranian law**,** Clause 16 of Article 1 of the Implementation Law of General Policies of Article 44 of the Constitution defines a merger as: an action through which several companies, by dissolving their legal personalities, form a new legal entity or are absorbed into another legal entity (Ghamami & Esmaeili, 2010, p. 167).

Articles 46 to 48 of Iranian law enumerate prohibitions and certain exceptions for mergers. However, they do not provide precise criteria for determining other specific cases. Article 48 uses strong and unusual language regarding loss of control and prohibits mergers that result in a dominant market position (Ghamami & Esmaeili, 2010, p. 167).

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In Malaysian law, anti-competitive mergers or acquisitions are currently not specifically regulated**.** However, the Malaysian Competition Commission proposed amendments to the 2010 Competition Act in 2022, according to which the Commission would have the authority to investigate and take action regarding anti-competitive mergers in Malaysia (Global Compliance News, n.d.).

Exceptions and Exemptions

In Iranian law, certain behaviors that may appear anti-competitive are not subject to enforcement if they do not have a significant impact on market processes, or if they are supported by substantial public interests, or if they do not fall under the legal definitions of anti-competitive behavior (Ghamami & Esmaeili, 2010, p. 173).

Article 50 of the Implementation Law of General Policies of Article 44 stipulates that trade associations covered by the Guilds Law, which engage in the retail sale of goods or services, are exempt from the provisions of this chapter. Additionally, the note to Article 44—which pertains to contracts between labor and employer organizations—can also be considered another exemption (Ghamami & Esmaeili, 2010, p. 173).

In Malaysia, the 2010 Competition Act provides room for exemptions from anti-competitive agreements mainly through guidelines related to Prohibition under Part 1. Exemptions can be granted either individually under Section 6 of the Act or through exceptions under Section 8 (Malaysia Competition Act, 2010).

According to Section 5 of the 2010 Act, liability for violating the provisions listed in Section 4 can be reduced on the basis of four grounds:

1. There are identifiable and significant technological, efficiency, or social benefits directly arising from the agreement.
2. The benefits could not reasonably be achieved by the contracting parties without certain effects that restrict, distort, or limit competition.
3. The detrimental effect on competition is proportional to the benefits provided by the agreement.
4. The agreement does not allow the company to completely eliminate competition in relation to a fundamental aspect or part of the goods or services.

It is noteworthy that, under the 2010 Act, the Malaysian Competition Commission generally has the authority to implement the exemption process. Any party claiming a reduction of liability must demonstrate that the benefits of the agreement are passed on to consumers (Global Compliance News, n.d.).

Regulatory Authority over Competition Law

Regulatory Authority in Iran

a) In Iran, according to Article 53 of the Implementation Law of the General Policies of Article 44 of the Constitution, the organization responsible for monitoring market performance and combating anti-competitive behavior is the Competition Council and the Appeals Board referred to in Article 64 (Ghamami & Esmaeili, 2010, p. 173).

The composition of the Competition Council is as follows:

1. Three members of the Parliament selected from the Economic, Planning and Budget, and Industries and Mines Committees (one member from each committee) appointed by the Islamic Consultative Assembly as observers;
2. Two judges of the Supreme Court appointed by the Chief Justice;
3. Two prominent economic experts nominated by the Minister of Economic Affairs and Finance and appointed by the President;
4. One prominent jurist familiar with economic law, nominated by the Minister of Justice and appointed by the President;

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5. Two experts in commerce, nominated by the Minister of Commerce and appointed by the President;
6. One expert in industry, nominated by the Minister of Industries and Mines and appointed by the President;
7. One expert in infrastructure services, nominated by the Head of the Management and Planning Organization and appointed by the President;
8. One financial specialist, nominated by the Minister of Economic Affairs and Finance and appointed by the President;
9. One representative elected by the Iran Chamber of Commerce, Industries, and Mines;
10. One representative elected by the Central Cooperative Chamber of the Islamic Republic of Iran.

The composition of the Appeals Board, which will be based in Tehran, is defined under Article 64 of the law:

Composition of the Appeals Board and Additional Regulatory Bodies in Iran

The composition of the Appeals Board in Tehran under Article 64 is as follows:

1. Three judges of the Supreme Court, appointed by the Chief Justice;
2. Two prominent economic experts, nominated by the Minister of Economic Affairs and Finance and appointed by the President;
3. Two experts in commercial, industrial, and infrastructure activities, jointly nominated by the Ministers of Industries and Mines and Commerce, and appointed by the President.

In addition to the Competition Council and the Appeals Board, according to Article 54 of the Implementation Law of the General Policies of Article 44 of the Constitution, a National Competition Center is established as an independent governmental institution under the supervision of the President to perform expert, executive, and secretarial tasks for the Competition Council. The head of the National Competition Center is also the Chairperson of the Competition Council (Ghamami & Esmaeili, 2010, p. 175).

b) In Iran, based on the Implementation Law of the General Policies of Article 44 of the Constitution, another body supervises the competition process at the highest level, ensuring the alignment of the Competition Council's resolutions with the law. This body has significant authority to nullify any resolutions of the Council. According to the note to Article 38 of the law and the powers granted by Article 138 of the Constitution, the Speaker of the Islamic Consultative Assembly may review the Council's resolutions and, if any conflict is identified, request the Council to amend or annul the conflicting provisions.

The Speaker's opinion, communicated within one week of identifying a conflict, is binding and not subject to objection, according to the Law on the Implementation of Articles 85 and 138 of the Constitution of the Islamic Republic of Iran (approved 26/10/1368 with subsequent amendments). Resolutions of the Council are sent to the Speaker for review, and if the Speaker declares a conflict, the Council must modify or cancel its resolutions accordingly. Under Note 5 appended to the Implementation Law, the Board for Reviewing and Aligning Government Resolutions with Laws advises the Speaker on reviewing the Council's resolutions (Ghamami & Esmaeili, 2010, p. 175).

Regulatory Body in Malaysia

The Malaysia Competition Commission (MyCC) is an independent body established under the Malaysia Competition Commission Act 2010 to enforce the Competition Act 2010. Its primary role is to protect the competitive process for the benefit of businesses, consumers, and the overall economy (https://www.mycc.gov.my/legislation).

The Competition Commission Act 2010 empowers the MyCC to:

1. Enforce the provisions of the Competition Act 2010;

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2. Issue guidelines related to the implementation of competition laws;
3. Act as an advocate for competition;
4. Conduct studies on competition-related issues in the Malaysian economy or in specific sectors;
5. Inform and educate the public on ways competition can benefit consumers and the Malaysian economy.

According to the Act, members of the Commission are appointed by the Prime Minister. Apart from the Chairperson, the Commission must include several members from government and private sectors. Specifically, there should be a representative from the Ministry of Domestic Trade and Consumer Affairs, and 3 to 5 private sector members with expertise in commerce, law, economics, public administration, competition, or consumer protection (New Straits Times, 2015).

Each member serves a term of three years and may be reappointed for a maximum of two consecutive terms.

The Commission acts based on information and complaints received from consumers, businesses, and the public, provided that such information or complaints give rise to reasonable suspicion of a violation of the Competition Act. On this basis, the Commission may take action through two main approaches (https://www.mycc.gov.my/legislation) :

The Commission may act in one of the following two ways:

1. Based on the Minister's directive; or
2. On its own initiative, after conducting a market review.

Measures and Penalties

Fines and Obligations

Competition authorities in each country, based on their mandate to maintain optimal competitive conditions in the market and combat anti-competitive and unlawful behaviors, are endowed with specific powers (Ghamami & Esmaeili, 2010, p. 177). These powers range from policy-making to inspection and supervision, followed by precautionary and suspension measures. In Iran, the issuance of criminal penalties also falls within the jurisdiction of the Competition Council and the Appellate Board, which may be challenged from the perspective of civil rights and even criminal law principles—particularly Article 36 of the Constitution, which stipulates that penalties must be determined by judicial authorities (Ghamami & Esmaeili, 2010, p. 177). According to Articles 51 and 61 of the Law on Implementing the General Policies of Principle 44 of the Constitution, these powers include:

1. Suspending activities or not enforcing exclusive rights, including limiting the period of exercising such rights;
2. Prohibiting parties to contracts, agreements, or settlements related to exclusive rights from performing all or part of the obligations stipulated therein;
3. Annulment of contracts, agreements, or understandings related to exclusive rights if measures under clauses (a) and (b) prove ineffective;
4. Imprisonment (ta'zir);
5. Obligation to disclose information publicly;
6. Ordering the removal of managers;
7. Monetary fines.

In Malaysia, for violations of Part I and Part II, the Competition Act grants the Malaysian Competition Commission the authority to impose financial penalties of up to 10% of a company's worldwide turnover during the period of the infringement. This penalty is assessed based on the turnover of the entire corporate group involved (Malaysia Competition Commission, 2014, December 14).

The Commission's guidelines on financial penalties note that in determining the amount for a specific case, factors such as the severity, duration, and market impact of the infringement, whether the violation was

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intentional or repeated, the role of the company in the infringement, the existence of compliance programs, and prior financial penalties in similar cases are considered important (Malaysia Competition Commission, 2014, December 14).

These guidelines also recognize that aggravating and mitigating factors may influence the final penalty imposed (Malaysia Competition Commission, 2014, December 14). While anti-competitive activities may result in financial penalties, they do not lead to criminal prosecution (Global Compliance News, n.d).

However, the Competition Act specifies that interfering with the Commission's investigations, disclosing impending investigations or visits to third parties, or threatening or retaliating against companies, economic entities, or individuals who lodge complaints or assist the Commission, is considered a criminal offense (Competition Act 2010, Part III).

Companies found in violation of the law may face fines of up to 5 million Malaysian Ringgit, but not exceeding 10 million Ringgit (Malaysia Competition Commission, 2014, December 14). For individuals, first-time non-compliance may result in fines exceeding 1 million Ringgit, imprisonment for up to five years, or both. Subsequent violations may result in fines exceeding 2 million Ringgit, imprisonment for more than five years, or both (Malaysia Competition Commission, 2014, December 14).

A company or economic entity may appeal the Commission's decisions to the Federal Court. The Federal Court judge will review the complaint of the company (deemed to have violated the law by the Malaysian Competition Commission) and either uphold the Commission's decision or overturn it and issue a new ruling. The Commission may then appeal the Federal Court's decision to the Court of Appeal, which will issue a final verdict (Competition Act 2010, Part V).

Reduction of Penalties

Although Iranian law does not explicitly provide for the reduction of penalties, Malaysian competition law has established a penalty reduction regime. Under this regime, a company that admits to violating the prohibition on inherently illegal horizontal agreements may receive immunity or a reduction of up to 100% of the penalties that would otherwise apply (Malaysia Competition Commission, 2014).

According to the Malaysian Competition Commission's guidelines on the penalty reduction regime, the Commission may exercise its discretion to grant full (100%) relief or partial reductions of financial penalties, subject to conditions it deems appropriate for this purpose (Malaysia Competition Commission, 2014).

It is important to note that 100% reduction of financial penalties is not available to a company that has initiated a cartel or taken steps to coerce another company into participating in cartel activities (Global Compliance News, n.d.).

Moreover, any reduction in penalties granted to an individual or company does not protect the offender from other legal consequences, such as civil proceedings initiated by harmed third parties, where the damage or loss is directly attributable to the competition law violation (Global Compliance News, n.d.).

Under the Commission's penalty investigation guidelines, any person wishing to apply for penalty reduction may request a marker to establish priority relative to other applications. The marker is valid for only 30 days from the date of issuance, during which the applicant must complete their penalty reduction request; otherwise, they risk losing their priority position (Malaysia Competition Commission, 2014, December 14).

It should be noted that the deterrent effect of penalties in Malaysia has proven to be highly effective in preventing competition law violations. According to the Malaysian Competition Commission's website, which is

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regularly updated with new cases of competition law infringements, the legal framework and the Commission's guidelines have had a significant impact on monitoring and reducing violations. The number of reported infringements annually, compared with anti-competitive behaviors such as cartels and monopolies, has shown a positive effect in reducing such anti-competitive conduct by companies in the market (https://www.mycc.gov.my/legislation).

Compensation for Third Parties

In Iran, Article 66 of the Law on the Implementation of the General Policies of Article 44 stipulates that natural and legal persons who suffer damages from anti-competitive practices under this law may, within one year from the finalization of the decisions of the Competition Council or the Board of Review regarding the implementation of anti-competitive practices, file a claim before a competent court to seek compensation. The court, while observing the provisions of this law, will consider the claim only if the plaintiff attaches a copy of the final decision of the Competition Council or the Board of Review to the claim (Ghamami & Esmaeili, 1389 [2010], p. 179).

Similarly, under Malaysia's Competition Act 2010, third parties who directly or indirectly suffer loss or damage as a result of a breach of the law are specifically granted the right to pursue civil proceedings in court (Competition Act 2010, Part VI).

Judicial Decisions and Case Law

One of the most important legal sources in any area of law is the study of judicial decisions and final rulings of relevant adjudicatory authorities. In Iran, since the Competition Council has been established relatively recently, its decisions have not yet crystallized as a significant legal precedent. Moreover, the process of privatization of state-owned enterprises—particularly those conducted outside the stock exchange and through non-transparent negotiations based on Article 20 of the Law on the Implementation of the General Policies of Article 44 of the Constitution—such as the privatization of telecommunications blocks, steel complexes, mines, and automotive companies like Iran Khodro and Saipa to quasi-governmental or private entities, reflects practices outside the legal framework of the Supreme Council for Implementing the General Policies of Article 44 and the Competition Council (Ghamami & Esmaeili, 1389 [2010], p. 179).

In Malaysia, due to its common law system rooted in English law, judicial precedents from Europe constitute an important source of competition law. The most influential case laws that have significantly impacted competition cases in Malaysia include:

1. Établissements Consten S.à.R.L. and Grundig-Verkaufs-GmbH v Commission of the European Economic Community, Joined Cases 56 and 58–64 [1966]
   - This case concerns prohibited agreements in the market that hinder free trade within the European Union.
2. Hydrotherm Gerätebau GmbH v Compact del Dott. Ing. Mario Andreoli & C. Sas [1984]
   - The court's opinion on the concept of a single economic entity in European competition law.
3. United Brands v Commission (1976), Case 27/76
   - Addresses the creation of a dominant market position and the erection of barriers to free market competition.
4. Hoffmann–La Roche v Commission, Case 85/76 [1979] ECR 461
   - Concerns dominance, market control, and the elimination of effective competition in the relevant market.

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5. Raidió Teilifís Éireann (RTÉ) and Independent Television Publications Ltd (ITP) v Commission, Cases C-241/91 P and C-242/91 P [1995]
6. International Business Machines Corporation v Commission [1981]
    - Both cases concern abuse of dominant market position in the television programming market.

Conclusion

The Law on the Implementation of the General Policies of Article 44 of the Iranian Constitution, as the main framework for competition law in Iran, is one of the most important laws aimed at the country's economic transformation. It was drafted and enacted with the objectives of reducing government ownership, expanding private sector participation, and strengthening market competition. This law is based on Article 44 of the Constitution, which defines the role of the government, the private sector, and the cooperative sector in the national economy.

In this context, Chapter Nine of the law, titled *"Facilitation of Competition and Prevention of Monopoly"*, seeks to strengthen the private sector, prevent monopolistic practices, facilitate market entry for participants, and promote fair competition in the market. However, in practice, it has not fully achieved these objectives. Moreover, the Competition Council, as the supervisory body over competition in Iran, has not been able to effectively counter anti-competitive behaviors in the economy, mainly due to legal deficiencies.

In contrast, the enactment of the Malaysian Competition Act in 2010 represented a significant step forward in implementing competition policy in Malaysia. Drawing on European competition law, particularly from the United Kingdom, the Malaysian Competition Act has established a relatively advanced competition law framework. Although there are still gaps and shortcomings regarding certain anti-competitive behaviors such as cartels and mergers, and not all legal provisions are fully developed, the competition law in Malaysia has enhanced consumer welfare, economic growth, and the efficiency of enterprises, while also promoting flexibility and innovation in the country's markets.

Furthermore, the Malaysian Competition Commission has performed relatively effectively in addressing anti-competitive conduct. By issuing comprehensive guidelines on such activities, the Commission has contributed to enhancing productivity, fostering innovation, and maintaining competition in Malaysian markets.

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