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

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

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

1 INTRODUCTION

The growth and development of countries in modern times require leveraging the commercial benefits of global markets. This necessitates the establishment of mechanisms that ensure access to domestic markets for all economic actors based on non-discriminatory principles. Domestic jurisdictions guarantee these principles by devising consistent bodies of laws and regulations. Ultimately, the implementation of these principles facilitates fair commercial competition within a common global market.[1]

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[1] OECD, *International Co-operation on Competition Investigations and Proceedings: Progress in implementing the 2014 OECD Recommendation* 9 (2021), https://www.oecd.org/daf/competition/international-cooperation-on-competition-investigations-and-proceedings-progress-in-implementing-the-2014-recommendation.htm (accessed 27 Sep. 2024).

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A domestic body of laws and regulations designed to ensure this fair competition is intended to promote the welfare of society, which is the ultimate goal of the standards and principles of competition law.[2] In Iran, the existence of a legal framework governing competition law is not as long-standing as in leading legal systems. However, the legislature has made efforts in recent years to introduce a cohesive set of rules into the legal system, which is inspired by modern domestic competition laws. This relatively new legal framework mainly consists of the 2008 'Law on Promoting Competition and Preventing Monopolies' (LPCPM).[3] Some provisions of the LPCPM, which prohibit abusive and collusive anti-competitive behaviours, are complemented by the 2009 'Law on Consumer Rights Protection' (LCRP).[4] Despite these efforts, this legal framework has not yet been well-tested in practice because of its nascent nature. Consequently, its potential implications for market competition can hardly be examined through empirical studies.

Given this difficulty in gaining empirical insights, theoretical assumptions should underpin the analysis of this legal framework. This analysis aims to determine the extent to which Iran's competition law aligns with the general principles of competition law, including efficiency, market fairness, and economic integration. These principles are internationally recognized standards forming the foundation of free trade competition.[5] Therefore, evaluating Iranian laws against these core principles sheds light on the ability of Iranian markets to interact with and define themselves within the global common market.

The present essay, employing the analytical framework of law and economics, seeks to argue that Iran's competition law can largely meet the requirements of the said principles, provided that the economic policies of this country move towards the convergence of its markets with international markets. To substantiate this argument, the essay is structured into three main chapters. The first chapter provides a concise overview of the general principles of competition law in leading legal systems by using a comparative method. The second chapter introduces the legal framework of Iranian competition law within which these principles will be analysed. Finally, the third chapter adopts a law and economics approach to assess the congruence of the Iranian legal framework with the core principles of competition law.

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2 Louis Kaplow, *On The Choice of Welfare Standards in Competition Law,* in *The Goals of Competition Law* 3 (Daniel Zimmer ed. 2012).

3 Law on Promoting Competition and Preventing Monopolies of 14 Jun. 2008 (Iran).

4 Law on Consumer Rights Protection of 7 Oct. 2009 (Iran).

5 Touba Sadeghi, *Principles Governing Commercial Competition Law With a View to the Relevant Legislative Bill*, 23 J. Theology & L. 169 (2007) (Iran).

2 GENERAL PRINCIPLES OF COMPETITION LAW: A COMPARATIVE OVERVIEW

Competition law in various legal systems is founded on the three notions of 'efficiency', 'fairness' and 'economic integration'. The principle of efficiency focuses on creating conditions where the best possible commercial products are produced with the least capital and resources. Where efficient and optimal decisions are taken, the overall value of the property and products are increased, and ultimately economic efficiency emerges. This efficiency encourages innovation, lowers prices, and improves product quality. Competition authorities often assess anti-competitive practices in their jurisdiction by measuring their impact on efficiency in a market. This is because the enhancement of efficiency aligns with the core objective of competition policy, which is the maximization of consumer welfare.[6]

Fairness is another fundamental principle underpinning competition law, ensuring that markets operate fairly and transparently. It aims to prevent abusive, discriminatory, and monopolistic practices, as well as collusion that distorts competition. Fair competition allows all participants, regardless of their size or market position, to have an equal opportunity to compete in markets. It creates confidence that even small businesses and companies can remain competitive. The importance of fairness is emphasized when competition regulations protect business competitors, customers and consumers, thereby promoting social and distributional justice.[7]

Competition law recognizes the importance of international commerce. This is why integration within the international market holds critical significance. The principle of economic integration emphasizes the necessity of adopting competition policies that are consistent with global trade exigencies and foster economic convergence. It encourages the removal of impediments to international trade and prevents practices that hinder global fair competition. By removing these impediments, economic actors – such as businesses, consumers, and investors – can more freely engage in the exchange of goods, services, and capital. This principle is particularly relevant in today's interconnected global economy.[8]

These internationally recognized principles are widely accepted across leading legal systems. In the United States, competition law is primarily governed by the Sherman Antitrust Act,[9] the Clayton Antitrust Act,[10] the Robinson-Patman Act[11]

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6 Heshmatollah Samavati, *An Introduction to Competition Law and Its Role in Market Policy and Regulation* 28, 35 (1995).

7 Laura Parret, *The Multiple Personalities of EU Competition Law: Time for A Comprehensive Debate on Its Objectives,* in *The Goals of Competition Law* 61, 74 (Daniel Zimmer ed. 2012).

8 Majid Shokoohi, *Competition Law in EU* 2 (2000).

9 Sherman Antitrust Act of 1890, 15 U.S.C. §1.

10 Clayton Antitrust Act of 1914, 15 U.S.C. §12.

11 Robinson-Patman Act of 1936, 15 U.S.C. §13.

and the Federal Trade Commission Act,[12] with a historical emphasis on economic efficiency and consumer welfare. US courts tend to focus on protecting competition rather than individual competitors. Therefore, they prioritize consumer interests and economic efficiency.[13] Fairness, though not explicitly mentioned in the statutes, is also a key aspect of US competition law.[14] This notion, which serves as the cornerstone for establishing an equitable marketplace, ensures fair competition and prevents abuse of dominant positions. As to the economic integration, this notion is less pronounced in US antitrust laws, since these laws historically focused more on domestic competition. However, due to the global interconnectedness of economies, US enforcement agencies, such as the Department of Justice and the Federal Trade Commission, have increasingly collaborated with international counterparts to address cross-border antitrust issues and promote market convergence.[15]

These principles are also recognized, albeit to varying extents, in European law. EU competition law is established through Articles 101 and 102 of the Treaty on the Functioning of the European Union,[16] which is primarily enforced by the European Commission, alongside the National Competition Authorities of the Member States.[17] The EU legal framework places a strong emphasis on preventing anti-competitive behaviours that can harm both consumers and market structure. The European approach emphasizes not only efficiency but also fairness in markets.[18] It seeks to ensure that businesses compete on a level playing field free from discriminatory practices and anti-competitive behaviours. Moreover, EU competition law explicitly acknowledges the importance of integration within the European market. It aims to create an undistorted single market and promote the uniform application of competition regulations across Member States.[19]

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12 Federal Trade Commission Act of 1914, 15 U.S.C. §41.

13 Leela Cejnar & Rachel Burgess, *The Globalization of Competition Law: Yes or No?,* in *Comparative Competition Law: A Corpus of Articles 9, 15* (John Duns, Arlen Duke & Brendan Sweeney eds 2015).

14 *See* e.g., Federal Trade Commission Act, *supra* n. 12, §45: Unfair Methods of Competition Unlawful; Prevention by Commission.

15 Fed. Trade Comm'n, *International Competition* (2023), https://www.ftc.gov/policy/international/international-competition (accessed 27 Sep. 2024); *see also* Paul Friederiszick, *Moderating Globalization: Is There a Role for Antitrust Law? A Comparison of the Relevance of Entry, Expansion and Imports in US and EU Merger Proceedings*, 46(2) World Compet. L. Econ. Rev. 163 (2023), doi: 10.54648/WOCO2023010 for a discussion of US authorities' attitudes towards the competition of foreign entrants in US markets.

16 Consolidated Version of the Treaty on the Functioning of the European Union Arts 101–102, 26 Oct. 2012, 2012 O.J. (C 326) 47.

17 Katalin Cseres & Annalies Outhuijse, *Parallel Enforcement and Accountability: The Case of EU Competition Law,* in *Law Enforcement by EU Authorities: Implications for Political and Judicial Accountability* 82 (Miroslava Scholten & Michiel Luchtman eds 2017).

18 Csongor I. Nagy, *EU and US Competition Law: Divided in Unity? The Rule on Restrictive Agreements and Vertical Intra-Brand Restraints* 142 (2016).

19 European Comm'n, *The Single Market Programme (SMP)* (2021), https://competition-policy.ec.europa.eu/about/single-market-programme-smp_en (accessed 27 Sep. 2024).

Having outlined the general principles of competition law as they are recognized in leading legal systems, it is essential to examine how these principles are reflected within the Iranian legal framework, which is the focus of this study. However, before undertaking this analysis, the following chapter provides an overview of the key laws governing competition in Iran.

3 THE FRAMEWORK OF COMPETITION LAW IN IRAN

The competition law in Iran is primarily governed by the LPCPM.[20] This law constitutes Chapter 9 of the 2008 'Law on Implementation of General Policies of Principle 44 of the Constitution', which is also known as Iran's Privatization Law.[21] The LPCPM seeks to promote healthy competition by creating a fair and competitive environment for all market participants. It enhances transparency in transactions and market-related information to reduce risks and increase trust in the market. More importantly, however, the law aims to prevent monopolies and unfair competition. Articles 44 to 48 LPCPM contain provisions that prohibit, among other things, the abuse of dominant power, discriminatory pricing, the creation of barriers to market entry, monopolies in distribution, and any mergers or acquisitions that disrupt competition.[22]

Certain provisions of these articles – which prohibit collusion among suppliers to manipulate prices, lower product quality, or impose unfair conditions, as well as engagement in deceptive or misleading advertising practices – align closely with the LCRP,[23] which mandates transparent and fair pricing and ensures informed consumer choices. However, while both laws contribute to consumer welfare, they serve distinct purposes. The LPCPM is primarily concerned with ensuring a sufficient degree of market competition. In contrast, the LCRP focuses on fairness in commercial transactions and governs bilateral or multilateral trading relationships rather than the competitive structure of the market as a whole. That being said, the interaction between these laws helps paint a more comprehensive picture of the Iranian legal framework. In particular, the LCRP expands on and clarifies specific unfair practices, such as collusion,[24] that are already prohibited under the LPCPM. Conversely, the LPCPM establishes the mechanism for enforcing the prohibitions and, more generally, ensuring the proper application of the legal framework. It designates a public body known as the Competition Council to oversee market competition. The Council is responsible for issuing

20 Law on Promoting Competition and Preventing Monopolies of 14 Jun. 2008 (Iran).
21 Law on Implementation of General Policies of Principle 44 of the Constitution of 14 Jun. 2008 (Iran).
22 Law on Promoting Competition and Preventing Monopolies Arts 44–48.
23 Law on Consumer Rights Protection of 7 Oct. 2009 (Iran).
24 *Ibid.*, Art. 1(5).

implementation guidelines, ensuring market transparency and information accessibility, advising regulatory authorities, reviewing mergers and acquisitions, and dealing with complaints.[25]

The latter adjudicative power has been exercised by the Council in recent years in response to several complaints alleging monopolistic practices. For instance, in a 2022 case, following complaints against Tavanir, a government-owned power generation and distribution company, regarding the imposition of unfair contractual terms, the Competition Council confirmed the occurrence of anti-competitive practices. It classified these actions as an abuse of dominant position under Article 45 paragraph (i) LPCPM.[26]

This decision, along with other rulings by the Council, highlights its role in promoting fair competition in Iran.[27] However, due to the Council's relatively recent establishment and the limited number of precedents, these cases do not provide a sufficient basis for evaluating the implications of applying Iranian laws for the general principles of competition mentioned earlier. Therefore, rather than relying on case studies, the analysis of such implications should be grounded in theoretical foundations, which will be discussed in the next chapter.

4 EVALUATION OF IRANIAN LAWS IN LIGHT OF COMPETITION LAW PRINCIPLES

This chapter is devoted to the assessment of Iranian competition-related laws in terms of compatibility with the principles of efficiency, fairness, and economic integration outlined earlier. By scrutinizing the relevant provisions of Iranian Law, it is intended to explore how these provisions contribute to fostering a competitive

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25 Law on Promoting Competition and Preventing Monopolies Arts 58–62.

26 1401/9/9 [30 Nov. 2022], Session No. 525, Raye Shoraye Reghabat [Ruling of the Competition Council] (Iran), https://www.nicc.gov.ir/center/news-center/1522-2022-11-29-11-15-48.html (accessed 5 Oct. 2024).

27 *See* 1402/10/3 [24 Dec. 2023], Raye Shoraye Reghabat [Ruling of the Competition Council] (Iran), https://www.nicc.gov.ir/center/news-center/1863-or-pr-br-2.html (accessed 5 Oct. 2024); 1402/1/21 [10 Apr. 2023], Raye Shoraye Reghabat [Ruling of the Competition Council] (Iran), https://www.nicc.gov.ir/center/news-center/1634-2023-04-10-09-53-01.html (accessed 5 Oct. 2024); 1401/12/7 [26 Feb. 2023], Raye Shoraye Reghabat [Ruling of the Competition Council] (Iran), https://www.nicc.gov.ir/center/news-center/1608-2023-02-26-10-56-52.html (accessed 5 Oct. 2024); 1401/11/11 [31 Jan. 2023], Raye Shoraye Reghabat [Ruling of the Competition Council] (Iran), https://www.nicc.gov.ir/center/news-center/1575-2023-01-31-12-47-29.html (accessed 5 Oct. 2024); 1401/10/4 [25 Dec. 2022], Raye Shoraye Reghabat [Ruling of the Competition Council] (Iran), https://www.nicc.gov.ir/center/news-center/1546-2022-12-25-09-46-29.html (accessed 5 Oct. 2024); 1401/8/18 [9 Nov. 2022], Raye Shoraye Reghabat [Ruling of the Competition Council] (Iran), https://www.nicc.gov.ir/center/news-center/1509-2022-11-09-16-44-42.html (accessed 5 Oct. 2024); 1401/6/15 [6 Sep. 2022], Raye Shoraye Reghabat [Ruling of the Competition Council] (Iran), https://www.nicc.gov.ir/center/news-center/1463-2022-09-06-10-11-26.html (accessed 5 Oct. 2024).

domestic and international market in Iran. To this end, the chapter is structured into three sections. Utilizing a law and economics approach, each section focuses on the evaluation of Iranian laws against one of the aforementioned general principles.

4.1 The principle of efficiency

Efficiency is measured in a competitive market by assessing various factors that are its integral components, including allocative efficiency, the optimal allocation of resources and consumer welfare. Allocative efficiency refers to a situation in which goods and services are supplied in the quantity and at the price that is expected by consumers. This price not only covers but also is limited to the final production costs. Any action that disrupts this equilibrium by abusing a dominant market position, such as 'hoarding and refusal to enter into transaction', 'discriminatory pricing', and 'aggressive price setting' as listed in Article 45 paragraphs (a), (b), and (d) LPCPM[28] – undermines allocative efficiency and is considered anti-competitive. Therefore, the prohibition of such activities in these paragraphs serves to uphold the principle of economic efficiency.[29]

The second indicator of efficiency, as mentioned above, is the optimal allocation of resources. This optimal allocation is possible when there is free circulation of economic resources. Every trader seeks to obtain the highest amount of surplus by choosing the most profitable transaction. The amount of surplus created in a transaction, in turn, determines the degree of efficiency in the use of economic resources. However, when traders are limited to a certain range of business activities due to monopoly in the market, the optimal allocation of resources is disrupted and their productivity is reduced. This is the case when anti-competitive behaviours are conducted in one way or another by actors in the market.[30]

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28 Law on Promoting Competition and Preventing Monopolies Art. 45. Although Art. 45 LPCPM does not explicitly condition these practices on the existence of a dominant position, this requirement can be inferred. This is because the LPCPM is guided by modern competition law frameworks, such as EU competition law, where similar prohibitions apply only to entities in a position of market dominance. *See* Consolidated Version of the Treaty on the Functioning of the European Union Art. 102, 26 Oct. 2012, 2012 O.J. (C 326) 47.

29 Sandra M. Colino, *Vertical Agreements and Competition Law: A Comparative Study of the EU and US Regimes* 37 (2010); Maher M. Dabbah, *EC and UK Competition Law: Commentary, Cases and Materials* 6–7 (2004); Kaplow, *supra* n. 2, at 3, 4; Parret, *supra* n. 7, at 74; Mahmood Roozbehan, *Basics of Economics* 46 (2008); Katalin J. Cseres, *Competition Law and Consumer Protection* 20 (2005).

30 George A. Hay, *Anti-competitive Agreements: The Meaning of 'Agreement', in Comparative Competition Law: A Corpus of Articles 49, 56* (John Duns, Arlen Duke & Brendan Sweeney eds 2015); Mohammad H. Sadeghi Moghaddam & Behnaam Ghaffari Farsani, *The Soul of Competition Law (A Comparative Study on Objectives of Competition Law)*, 73 L. J. Judic. 113, 139 (2011) (Iran); Amir A. Alaoddini & Mehrzad Shiri, *Competition Law in Iran and Its Developments in the Light of the General Policies of Article 44*

To avoid this situation, Article 44 LPCPM prohibits any 'collusion'[31] that leads to monopolies and threatens other actors' freedom of choice. Collusion within the meaning of this provision is committed through either contracts, agreements or mutual understandings that have at least one of the following effects:

- 'determining prices for purchase or sale of goods or services and the method of their determination in the market either directly or indirectly';
- 'restricting or controlling the production, purchase, or sale quantities of goods or services in the market';
- 'imposing discriminatory conditions in similar transactions on trading partners';
- 'compelling trade parties to conclude contracts with third parties or imposing contractual terms on them';
- 'making the conclusion of a contract contingent upon counterparties' acceptance of supplementary commitments that are unrelated to the subject matter of the contract according to commercial practice';
- 'dividing or allocating the market for goods or services among two or more persons'; or
- 'restricting market access of those who are not parties to the contract, agreement or mutual understanding'.[32]

Such collusive practices restrict the free circulation[33] of economic resources by inhibiting innovation, artificially inflating prices, or limiting production and distribution. This impedes the natural flow of market forces and weakens the competitive environment, thereby undermining the optimal allocation of resources. Therefore, by prohibiting these restrictive activities, Article 44 LPCPM reinforces economic efficiency.

Apart from various kinds of collusion mentioned above, there are other anti-competitive behaviours that can have similar effects through unjustified interference[34] in the affairs of competitors. Examples of such behaviours are enumerated in Article 45 paragraphs (f), (h), (i), and (j) LPCPM, which include:

- 'coercive sale or purchase';

of the Constitution, 87 Judgm. Q. 119, 136 (2016) (Iran); Mark Furse, *Competition Law of the EC and UK* 13–14 (2008); Samavati, *supra* n. 6.

[31] For more discussion about collusion, *see* Colino, *supra* n. 28; Dabbah, *EC and UK Competition Law*, *supra* n. 29.

[32] Law on Promoting Competition and Preventing Monopolies Art. 44.

[33] Hay, *supra* n. 30; Sadeghi Moghaddam & Ghaffari Farsani, *supra* n. 30; Samavati, *supra* n. 6, at 28; Kaplow, *supra* n. 2; Parret, *supra* n. 7; Roozbehan, *supra* n. 29; Cseres, *supra* n. 29.

[34] Hay, *supra* n. 30.

- 'interfering in the internal affairs or transactions of a competing enterprise or company; encouraging, inciting, or coercing one or more shareholders, investors, directors, or employees of a competing enterprise or company through exercising voting rights, transferring shares, disclosing secrets, interfering in the transactions of enterprises or companies, or other similar methods to perform actions that are detrimental to the competitor';
- 'abuse of a dominant economic position'; and
- 'restricting re-sale prices'.[35]

Through such behaviours, the economic actor uses its market power to influence decision-making in other companies or to persuade others to enter into certain transactions or accept additional conditions and obligations alongside the main contracts. This will limit the free choice of the companies concerned. Needless to say, such conditions deprive the affected enterprises of the opportunity to trade with the highest level of surplus. While it should be possible to earn more profits, choosing transactions with lower profits means nothing other than a reduction in the productivity of the resources under control, which will disrupt the efficient flow of economic resources. Therefore, the law forbids such anti-competitive behaviours to ensure the optimal allocation of resources.[36]

The same also applies to Article 45 paragraphs (e) and (g) LPCPM, which specify other practices impairing free choice. These include 'misleading statements' and 'supplying substandard goods or services'. The distinction between these latter two and the former behaviours is the way in which they impair free choice. While the former activities are carried out through unjustified interference in the affairs of other enterprises, the latter practices restrict the trader's free and conscious choice through fraudulent actions that result in the uninformed decision of the trader. The harmful effect of such practices is so important that their prohibition is reiterated in Articles 5, 6, and 7 LCRP.[37] Under the latter provisions, suppliers of goods and services are required to provide clear and accurate information about the costs, characteristics, and conditions of such goods and services. They are prohibited from making false advertisements and providing incorrect information. If misleading and deceptive information or non-compliance with expected standards obscure the real characteristics of the goods and services offered to the trader, this means that the trader's ability to choose is limited to a transaction in which he/she is not correctly informed about the amount of surplus that can be gained. In other words, he/she enters into the deal with an

35 Law on Promoting Competition and Preventing Monopolies Art. 45.
36 Maurice E. Stucke, *What Is Competition?,* in *The Goals of Competition Law* 27, 34 (Daniel Zimmer ed. 2012).
37 Law on Consumer Rights Protection of 7 Oct. 2009, Arts 5–7 (Iran).

unrealistic calculation. It is notable that the trader usually achieves a smaller surplus than estimated in such transactions. This leads to a reduction in the intended desirability of that transaction, the desirability that forms the basis of the trader's satisfaction with the deal. In such circumstances, the productivity of resources controlled by the deceived or uninformed party is reduced.[38]

In addition to the above drawback, the lack of transparency and clear flow of information in such transactions undermines public trust. One of the necessary conditions to lay the foundation for economic efficiency is the expansion of social capital and, in particular, the development of public trust. Conversely, the lack of public trust in society leads to limited economic exchanges. This is because the manner each transaction is carried out is significantly influenced by the parties' previous interactions and their mutual understanding. If public trust in the social context is shaken, the interaction of the parties will encounter more obstacles, thereby reducing the scope of trade. The basis of public trust in the market is eroded by providing incorrect and deceptive information in transactions. This instability in public trust, in turn, reduces the volume of future transactions. With the reduction of economic exchanges in the market, resources have fewer opportunities to realize their potential. As a result, economic benefits are not properly realized and, ultimately, economic resources are not optimally allocated. This will reduce productivity and economic efficiency. On that account, the above provisions of Iranian law, which prohibit such conduct and require the provision of accurate and complete information about the goods and services traded, guarantee economic efficiency.[39]

The provisions of LPCPM also strengthen the last integral component of economic efficiency and a key objective of competition law, namely consumer welfare. A consumer's level of welfare is measured by considering the amount of surplus he/she gains through each transaction. This surplus is calculated as the difference between the maximum price that the consumer is willing to pay and the price that he/she actually pays for the transaction.[40] However, if discriminatory conditions and prices are applied to different traders, the prices and conditions expected by consumers may vary, making the surplus created in similar transactions ambiguous. When the surplus cannot be reliably estimated, the consumer may not be able to calculate the desirability of future transactions and, consequently, may not be able to predict the level of economic welfare achievable in each transaction. This is the reason why 'discriminatory pricing' and 'discrimination in transaction conditions' are prohibited under Article 45 paragraphs (b) and (c) LPCPM.[41]

[38] Stucke, *supra* n. 36; Samavati, *supra* n. 6, at 28; Hay, *supra* n. 30.
[39] Colino, *supra* n. 29; Dabbah, *EC and UK Competition Law*, *supra* n. 29; Furse, *supra* n. 30; Samavati, *supra* n. 6; Alaoddini & Shiri, *supra* n. 30, at 138–139.
[40] Hay, *supra* n. 30; Sadeghi Moghaddam & Ghaffari Farsani, *supra* n. 30; Samavati, *supra* n. 6, at 28.
[41] Law on Promoting Competition and Preventing Monopolies Art. 45.

Engagement in such unfair and abusive practices by dominant market entities not only harms individual consumers but also distorts market conditions. This, in turn, disturbs economic welfare and its accurate calculation, which are essential for the efficient circulation of production resources.[42]

Other practices that harm consumer welfare include anti-competitive acquisitions and mergers. To prevent such harm, Articles 47 and 48 LPCPM impose certain restrictions on acquisition and merger activities.[43] These restrictions aim to maintain a sufficient number of manufacturers and suppliers in the market. This is because the market mechanism operates more efficiently when there are multiple manufacturers and suppliers. Conversely, reducing the number of economic actors in any sector increases the possibility of market concentration, which can provide a platform for monopolies in the market. That is why the legislature seeks to prevent the formation of unnecessary concentrations and mergers by promoting the diversity and multiplicity of suppliers and manufacturers. In the Absence of such diversity, monopolies can prevent the optimal allocation of production factors.[44] In this event, a manufacturer or supplier faces no competitor who can significantly influence the price of the goods or services it offers. By contrast, the presence of competitors will enable consumers to measure the potential surplus of each transaction and to choose among different products, thereby increasing their overall welfare. The concern about the disruption of this welfare through anti-competitive mergers and acquisitions is reflected in Articles 47 and 48 LPCPM. Article 48 LPCPM contemplates four cases, where 'merger of companies or enterprises is forbidden'. These include situations where:

- 'the actions mentioned in Art 45 will be taken during or as a result of the merger';
- 'the price of goods or services increases unconventionally as a result of the merger';
- 'the merger will lead to extreme concentration in the market'; or
- 'the merger will result in the establishment of a dominant enterprise or company in the market'.[45]

By specifying these situations, the law sets limits[46] for the formation of any merger in the market. Indeed, they serve as actionable criteria for determining whether a merger is lawful. By contrast, Article 47 LPCPM sets out no objective criterion as

42 Kaplow, *supra* n. 2; Parret, *supra* n. 7; Roozbehan, *supra* n. 29; Cseres, *supra* n. 29.
43 Furse, *supra* n. 30; Samavati, *supra* n. 6; Alaoddini & Shiri, *supra* n. 30, at 138–139.
44 Andreas Fuchs, *Characteristic Aspects of Competition and Their Consequences for The Objectives of Competition Law – Comment on Stucke, in The Goals of Competition Law* 53, 59 (Daniel Zimmer ed. 2012).
45 Law on Promoting Competition and Preventing Monopolies of 14 Jun. 2008, Art. 48 (Iran).
46 Hay, *supra* n. 30.

to what is considered an unlawful acquisition. According to this article, '[n]o natural or legal person may acquire the capital or shares of other companies or enterprises in a way that disrupts competition in one or more markets'.[47] The provision refers to the 'disruption of competition' without further clarifying which acquisitions disrupt competition.[48] This ambiguity can lead to inconsistent interpretations of the law and increase the likelihood of outcomes that run counter to the legislature's goals of promoting consumer welfare and economic efficiency. Ultimately, such outcomes may even undermine the freedom of trade as a fundamental standard of competition.[49]

4.2 The principle of fairness

The assurance of fairness requires both preventive and supportive measures. Every domestic competition law should prevent abusive, collusive, discriminatory, and monopolistic practices that hinder the fair functioning of the market.[50] At the same time, the law is expected to ensure equal opportunity for all players to fairly compete in the market. Both these aspects are considered by the Iranian legislature in the enactment of competition-related laws. The preventive aspect is particularly expressed in the above-mentioned Article 44 LPCPM, which prohibits any collusion among economic actors to impair competition. However, the prohibition of collusion is not limited to the LPCPM but is also addressed in the LCRP. Although the latter law primarily focuses on regulating fair commercial practices rather than market competition, it still provides valuable insights into concepts shared by both laws. In particular, the LCRP offers a definition of collusion, which should be read alongside the pertinent provision in the LPCPM to gain a clearer understanding of its meaning. Under Article 1 paragraph (5) LCRP 'collusion' refers to 'any compromise and complicity between the suppliers of goods and services in order to increase the price or reduce the quality or limit the production or supply of goods and services or impose unfair conditions *based on custom in transactions*'.[51] The key element of this definition is 'custom',[52] which serves as a criterion for distinguishing unfair practices in complementing the provisions of Article 44 LPCPM. While the prohibition of collusion in Article 44 LPCPM – as

47 Law on Promoting Competition and Preventing Monopolies Art. 47.
48 Dabbah, *EC and UK Competition Law*, *supra* n. 29, at 7.
49 Alaoddini & Shiri, *supra* n. 30, at 138–139.
50 Furse, *supra* n. 30.
51 Law on Consumer Rights Protection of 7 Oct. 2009, Art. 1 (Iran) (emphasis added).
52 For further reflection on Custom, *see* Colino, *supra* n. 29; Dabbah, *EC and UK Competition Law, supra* n. 29.

discussed above – reinforces economic efficiency, adding the new criterion of custom to the definition of collusion links efficiency with fairness.[53]

Economic efficiency and optimal resource allocation depend on choices made by economic actors.[54] A market is considered efficient when resources are allocated in a way that results in the highest possible surplus, while products or services are offered at the highest quality available in that market.[55] On the other hand, the quality and characteristics of goods and services are constrained by market capabilities, which are continually enhanced with advancements in knowledge and technology. Consequently, public expectations regarding the quantity and quality of goods and services evolve along with these improvements. Technological progress drives shifts in supply, pricing, and product quality. These advancements indirectly influence consumer preferences by increasing awareness of new capabilities in the market. Ultimately, the sum of these capabilities shapes the evolution of public expectations. The capabilities available in a market, in turn, develop through the contributions of economic actors who – as members of the community – have active access to that market. The more members of a community bring capabilities to the market, the higher the level of public expectations rises. In other words, the flow of market exchanges resulting from the infusion of various capabilities shapes public expectations regarding the quantitative and qualitative levels of goods and services.[56]

These public expectations are meaningfully related to the formation of commercial customs as established practices within a market. In particular, they can lead to the development of those customs that characterize fair market practices.[57] This is the reason why reference is made to custom in Article 1 paragraph (5) LCRP. When an established custom identifies a business process as unfair, it implies that – based on the capabilities offered by market participants – the level of public expectations is higher than what the suppliers concerned provide. The same criterion can be used to determine whether specific suppliers have colluded to carry out unfair practices. Such collusion not only reduces efficiency and welfare of society but also undermines economic fairness. Due to the detrimental effects of suppliers' collusion and the unfair conditions imposed on the market through it, the legislature has criminalized it in Article 8 LCRP in order to prevent unfairness.[58]

53 Sadeghi Moghaddam & Ghaffari Farsani, *supra* n. 30, at 140; Alaoddini & Shiri, *supra* n. 30.
54 Hay, *supra* n. 30.
55 Furse, *supra* n. 30; Samavati, *supra* n. 6; Sadeghi Moghaddam & Ghaffari Farsani, *supra* n. 30.
56 Colino, *supra* n. 29; Dabbah, *EC and UK Competition Law*, *supra* n. 29.
57 Alaoddini & Shiri, *supra* n. 30.
58 Law on Consumer Rights Protection of 7 Oct. 2009, Art. 8 (Iran).

Unfair practices that distort competition are not limited to the collusion discussed above. Rather, there are other types of practices, such as 'the improper acquisition' of information and 'the abuse of a person's information and position' for one's own benefit or that of third parties, which harm fairness. These activities are prohibited under Article 45 paragraph (k) LPCPM because they give an unfair advantage to information holders. That being so, other economic actors who do not have such information, particularly new entrants, face difficulties in gaining existing market positions and opportunities. In this case, economic fairness will be undermined by the disruption of free market access.[59]

The same is also the case when company directors or employees compete with their own company and can thereby gain unfair access to market opportunities.[60] Due to the conflict of interests, Article 46 LPCPM prohibits 'the directors, advisors or other staff of the company or enterprise [from] simultaneously hold[ing] a similar position in a related company or enterprise or engag[ing] in a similar profession, with the aim of restricting or disrupting competition in one or more markets'.[61] Engaging in such prohibited activities enables these persons, among other things, to abuse information illegally gained through their position. As already discussed under Article 45 paragraph (k) LPCPM, the possibility of this abuse limits opportunities for competitors, leading to unfair market advantages that distort competition.[62] To prevent this unfairness, Article 46 LPCPM imposes a ban on the competition of directors and employees with the company concerned.[63] However, this provision is not formulated in such a way that it can perfectly achieve its objectives. This is because the prohibition is conditional on the intention to disrupt the competition, which is a rather subjective criterion and difficult to prove.[64] Therefore, if this criterion were removed or replaced with a more objective test – such as conditioning the prohibition on the misuse of insider information – the law would be better positioned to ensure economic fairness.

What has been discussed above concerns the preventive measures provided for by Iranian law in the interest of fairness. Nevertheless, the law also contains supportive provisions aimed at ensuring fair access to market opportunities for all stakeholders. One way the law ensures such access is by exempting weaker market participants from certain legal provisions. To this end, the LPCPM provides specific exceptions to the aforementioned prohibitions. For example, Article 50 LPCPM

[59] Karounga Diawara, *A Social Approach to the Goals of Competition Law in Developing Countries – Comment on Bakhoum,* in *The Goals of Competition Law* 441, 448 (Daniel Zimmer ed. 2012).
[60] Alaoddini & Shiri, *supra* n. 30.
[61] Law on Promoting Competition and Preventing Monopolies of 14 Jun. 2008, Art. 46 (Iran).
[62] Furse, *supra* n. 30; Hay, *supra* n. 30.
[63] It should be noted that the Amendment to the Commercial Code of 14 Mar. 1969, Art. 133 (Iran) contains a provision similar to Art. 46 LPCPM.
[64] Sadeghi Moghaddam & Ghaffari Farsani, *supra* n. 30, at 140.

excludes 'guild members subject to Guild Law who engage in the retail sale of goods or services' from the scope of the LPCPM.[65] The law assumes that guild members are small traders with limited bargaining power who, therefore, cannot trade their resources at the highest surplus.[66] Due to their presumed weak market position, they are permitted to form trade associations or other cooperative agreements to better protect their interests.[67] However, the approach adopted in devising this support mechanism is open to criticism. The law categorically exempts all guild members rather than determining exemptions based on their actual position in the market. A more tailored approach – which would exempt businesses below a certain revenue threshold – could better align with the goal of fairness.

In addition to retailers, the LPCPM also protects labour unions by exempting them from the prohibition of Article 44 LPCPM. The latter provision – which prohibits any collusion through contracts, agreements, or mutual understandings – contains a note that excludes 'contracts between labour unions and employer associations to determine wages and benefits' from the scope of its application, making them subject to Labour Law.[68] In other words, in order to reinforce the bargaining power of labour unions, their collective bargaining agreements with employer associations are not considered as prohibited collusion within the meaning of Article 44 LPCPM. It is important to note that, while the supply and demand of labour can be competitive like other economic resources, the labour market is unique in that the workforce is dispersed among a large number of individuals. This dispersion makes it difficult for workers to consolidate their bargaining power. As a result, workers may accept wages that are lower than the true value of their labour, which hinders the optimal allocation of their labour resources. To address this problem, the law allows workers to form labour unions and collectively negotiate better wages and working conditions. Therefore, the exception set out in the note to Article 44 LPCPM ensures economic fairness by strengthening the position of workers.[69]

Another category of individuals with weak market position includes consumers of goods and services. The need to reinforce consumer power has led the legislature to prescribe the establishment of consumer protection associations under Article 9 LCRP. The primary objective of these associations, as stated in this provision, is 'to organize public engagement in implementing consumer protection policies and plans'.[70] However, the scope of their authority outlined in Articles 12

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65 Law on Promoting Competition and Preventing Monopolies Art. 50.

66 Michael J. Trebilcock, Ralph A. Winter, Paul Collins & Edward M. Iacobucci, *The Law and Economics of Canadian Competition Policy* 425 (2003).

67 Colino, *supra* n. 29; Dabbah, *EC and UK Competition Law*, *supra* n. 29; Alaoddini & Shiri, *supra* n. 30; Sadeghi Moghaddam & Ghaffari Farsani, *supra* n. 30, at 140; Furse, *supra* n. 30; Samavati, *supra* n. 6.

68 Law on Promoting Competition and Preventing Monopolies Note to Art. 44.

69 Sadeghi Moghaddam & Ghaffari Farsani, *supra* n. 30, at 140; Samavati, *supra* n. 6.

70 Law on Consumer Rights Protection of 7 Oct. 2009, Art. 9 (Iran).

and 14 LCRP casts doubt on their effectiveness in achieving this objective. According to Article 12 LCRP, the responsibilities and powers of the associations include functions, such as raising consumer awareness, offering advisory opinions to relevant executive bodies for the effective enforcement of consumer protection regulations, providing legal assistance to consumers, handling complaints, and, upon request, referring disputes to competent authorities.[71] The latter responsibility is further elaborated in Article 14 LCRP. Under this article, the associations deal with disputes between consumers and respondents and – in case of the parties' failure to reach an agreement – forward their disputes to competent adjudicative bodies for binding resolution.[72] Given that these associations are intended to empower consumers, it is questionable how they can simultaneously act as neutral intermediaries responsible for a stage of dispute settlement. Moreover, while consumer protection in a competitive market requires swift procedures to efficiently remedy the violations of trade regulations, the intervention of the associations further prolongs and slows down the procedures.[73] Therefore, to better achieve the goal of economic fairness, the functions of these associations should be redefined to focus on the effective protection and advocacy of consumer rights, rather than serving as part of dispute settlement procedures.

4.3 The principle of economic integration

The principle of economic integration mandates the elimination of barriers to international trade and the avoidance of behaviours that impair global fair competition.[74] A domestic competition law aligns with this principle to the extent it can prevent such barriers and behaviours. In the context of Iranian law, as discussed earlier, Articles 44–48 LPCPM prohibit certain behaviours leading to the impairment of competition. However, these provisions do not themselves define impairment. Instead, the definition of this term is left to Article 1 paragraph (20) of the Privatization Law,[75] of which the LPCPM is a chapter. According to this paragraph, the impairment of competition refers to 'actions that result in monopoly, hoarding, economic corruption, public harm, concentration and circulation of wealth in the hands of specific individuals or groups, reduction of skill and innovation in society, or foreign economic dominance over the country'.[76] Most of the actions specified in this paragraph weaken economic convergence, an

71 *Ibid.*, Art. 12.
72 *Ibid.*, Art. 14.
73 Roozbehan, *supra* n. 29; Alaoddini & Shiri, *supra* n. 30.
74 Dabbah, *EC and UK Competition Law, supra* n. 29, at 7.
75 Law on Implementation of General Policies of Principle 44 of the Constitution of 14 Jun. 2008 (Iran).
76 *Ibid.*, Art. 1.

essential prerequisite of competition. Therefore, avoiding these anti-competitive actions, as noted above, is in the interest of economic integration. However, the situation is less clear-cut regarding one of the terms mentioned in this paragraph, namely 'foreign economic dominance'. Although the economic dominance of foreigners – like any other kind of dominant position – can impair competition, this term should not be defined in a way that promotes economic isolationism.[77]

National competition policies should aim to enhance economic prosperity by encouraging the convergence and integration of markets so that domestic markets can have access to each other's resources and production factors. The efficient use of such resources will increase social wealth and ultimately enhance public welfare.[78] Conversely, policies that restrict domestic markets to only domestic resources cannot lead to economic convergence.[79] Although an isolationist approach to foreign markets may prevent foreign economic dominance, it will, on the other hand, hinder integration into the global market. However, the need to avoid economic isolationism does not mean that countries should act passively in the face of attempts at foreign economic dominance. Rather, they should minimize the negative impacts of foreign economic decisions and shocks on their domestic markets while remaining open to global markets. One effective strategy is the maximization of domestic markets' comparative advantages to make foreign markets more dependent on the goods and services exported from the country. In an internationally competitive environment where countries compete to cultivate as many comparative advantages as possible, a country with greater economic comparative advantages not only strengthens its economic convergence but also mitigates the adverse impacts of global market interdependencies.[80] This approach enables the country concerned to prevent foreigners from gaining dominant market positions that impair fair competition. On that account, the position of Iranian competition law to avoid 'foreign economic dominance' is not *per se* at odds with the principle of economic integration, provided that macroeconomic policies promoting the convergence of domestic and international markets supersede Iran's existing protectionist policies.[81]

5 CONCLUSION

The competition law of Iran – as embodied in the 'LPCPM and supplemented by provisions of the LCRP constitutes a relatively new legal framework inspired by

[77] Two Raymond Barre, *Political Economy* 563–565 (Manoochehr Farhang trans., Soroush Publishing 1988).
[78] Alison Jones & Brenda Sufrin, *EU Competition Law: Text, Cases, and Materials* 10 (2016).
[79] Maher M. Dabbah, *Competition Law and Policy in the Middle East* 304 (2007).
[80] Sadeghi Moghaddam & Ghaffari Farsani, *supra* n. 30, at 140.
[81] Barre, *supra* n. 77; Samavati, *supra* n. 6.

contemporary competition laws of modern legal systems. In the absence of established jurisprudence and empirical data, a law and economics analysis of this legal framework in light of the general principles of competition law elucidates the degree of congruence between the legislative intent underlying this law and its effectiveness in fulfilling that intent. This analysis shows that, while this legal framework seeks to promote a competitive environment by strengthening efficiency, market fairness, and economic integration, some of its provisions fall short of achieving these objectives in their practical application and clarity.

The framework of Iranian competition law addresses key elements underpinning economic efficiency by prohibiting behaviours that distort these elements. In doing so, Articles 44 and 45 LPCPM target anti-competitive activities such as hoarding, collusive monopolies, unwarranted interference in other enterprises' affairs, discriminatory pricing, and deceptive practices. Prohibiting these practices enhances allocative efficiency, optimal resource allocation, and consumer welfare. The same is true for the prohibition of anti-competitive mergers by introducing objective tests to distinguish such mergers under Article 48 LPCPM. These tests are clear enough to guide economic actors in avoiding unauthorized mergers, thereby bolstering efficiency. Despite these strengths, a critical ambiguity in the legislation – namely the vague criterion for identifying unlawful acquisitions of companies in Article 47 LPCPM – may hinder the full realization of economic efficiency. This ambiguity can be addressed by Iran's Competition Council as the sole authority for identifying the instances of anti-competitive practices and deciding on complaints regarding such practices. This Council should articulate clear standards for what constitutes an unlawful acquisition when dealing with complaints.

In terms of fairness, the evaluation of the competition-related body of law demonstrates its commitment to fostering an equitable marketplace. Within this framework, preventive measures – such as the said prohibition of collusion in Article 44 LPCPM, along with Article 1 paragraph (5) and Article 8 LCRP – are designed to deter the imposition of unfair conditions on the market. Additionally, the prohibition of the abuse or improper acquisition of information in Article 45 paragraph (k) LPCPM, as well as the prohibition of competition by company directors and employees with their own company in Article 46 LPCPM, seek to prevent unfair access to market opportunities. Although these prohibitions are overall effective in preventing such unfair access, the subjective approach of Article 46 LPCPM – which makes the restriction imposed on company directors and employees contingent upon their intent to disrupt competition – diminishes the provision's practicality. If this conditional wording were revised, the law could more effectively prevent unfairness.

Apart from the above preventive provisions, this legal framework contains support mechanisms intended to guarantee fair market access for all stakeholders.

These mechanisms encompass exemptions from certain prohibitions for small traders and labour unions under the note to Article 44 and Article 50 LPCPM, as well as the establishment of consumer protection associations under Article 9 LCRP. These measures enable weaker market participants to better safeguard their interests. The protection of interests through such mechanisms enhances these stakeholders' positions and thus promotes market fairness. However, these support mechanisms involve a few drawbacks. One issue is the unqualified exemption of all guild members from the prohibitions set forth in the LPCPM. As a *de minimis* rule, such an exemption should be granted based on an economic assessment of actual market power rather than a fixed legal classification. Another drawback concerns the consumer protection associations' authority outlined in Articles 12 and 14 LCRP, which assigns them a dual role of protecting consumer rights and simultaneously participating in dispute settlement. However, in contrast to this dual role, directing these associations to focus on their core function of consumer protection and excluding them from dispute resolution procedures facilitate a more swift redressal of consumer rights violations in order to meet the requirements of a fair competitive market.

Regarding economic integration, its main prerequisite, the enhancement of global fair competition, is addressed by Articles 44–48 LPCPM, which prohibit behaviours impairing competition. The impairment of competition is clearly defined in Article 1 paragraph (20) of the Privatization Law through an exhaustive list of anti-competitive actions. However, what raises doubts about the capacity of the law to reinforce economic integration is part of its definition of impairment of competition, which includes actions resulting in 'foreign economic dominance'. There is a fear that this term, if wrongly interpreted as promoting economic isolationism, could undermine the benefits of market convergence. This is because the convergence of markets requires them to remain open to global competition.

Iran has pursued efforts to converge its domestic markets with regional and global markets by engaging in international agreements and organizations. For instance, its observer status in the World Trade Organization (WTO) and the pursuit of full membership reflect these efforts. Achieving WTO membership requires a shift from current protectionist policies towards those that promote economic integration. In the final analysis, market convergence and economic integration increase predictability and certainty in domestic markets, thereby strengthening the Rule of Law. This approach allows the effective implementation of Iran's competition law and thus contributes to a better realization of efficiency and fairness.