

Competition Regulations under Iranian Legal System

The rather recent complaint raised against Iran Central Bar Association by some of the law graduates before the Competition Council made us have a look at competition regulations in Iran's legal system. The relevant graduates have objected the capacity limitation set for being admitted in the bar exams alleging that setting a capacity limitation as opposed to having a criteria based exam is contrary to the applicable competition regulations.

The competition regulations have been stipulated in "Act on Execution of General Policies of Principle 44 of Constitution" (the "Act") prohibiting the disturbance in competition to be observed by both the private and public companies (Articles 44-48). In addition, determining whether the disturbance of the competition has occurred is in the sole discretion of the "Competition Council".

Articles 44 of the said Act prohibits any kind of conspiracy (in any form) between persons/entities in a way that would cause disturbance in the competition such as the followings:

- To ascertain the price of purchase or sale of goods or services in the market directly or indirectly;
- To define or make the amount of production, purchase or sale of goods or services in the market under the control;
- To impose discriminatory conditions on the business partners in similar transactions
- To oblige the other party to enter into contracts with third parties or imposing the contract terms on them

Furthermore, Article 45 of the Act prohibits the acts of disturbing the market such as:

- Individual or collective act of refraining from entering into transaction or limiting the amount of the product or services subject of the transaction
- To oblige the other parties from entering into other transactions or limiting their transaction with the competitors;
- To impose discriminatory terms and conditions into the business parties in the same transactions;
- Discriminatory pricing;
- Intervention in internal affairs or transactions of the competitor firm or enterprise;
- Misuse of the prevailing financial circumstance in the following modes:
 - To restrict the amount of supply or demand in order to increase or decrease the market price;
 - Imposing unfair contractual terms
 - To hurdle the entrance of new competitor or to eliminate the competitor firm or enterprise in a certain activity
- To restrict the price for re-sale;

In case the Council after investigation or receiving complaints would find that the disturbance has actually occurred, it could take one of the following measurements in accordance with Article 61 of the said Act:

- To order the termination of the agreements consisting of the anti-competition provisions;
- To publicly disclose the relevant information for the sake of market transparency;
- To order the stoppage of any anti-competitive practices;
- To order for the discharge of the director(s) subject of Article 46 of the Act;

- To order for the assignment of shares which have been obtained against Article 47 of the Act;
- To order the refund of income or confiscation of property resulting from anti-competitive practices;
- To order the company to stop its activities within a specific area or subject-matter;
- To order to cancel the merges occurred as opposed to the provisions of antitrust regulations;
- To order to amend the AoA, MoMs of the company.
- Compel the companies to observe the minimum supply and pricing at exclusivity conditions.
- To determine monetary penalty in case the provisions of the Article 45 of the Act have been breached.

Now coming back to the complaint against ICBAR, the opposers have cited Article 44 and 45 above while their main argument is based on Note 2 of Article 7 of the Law Amending Articles 1, 6 & 7 of the Act stipulating that business license issuers are not allowed to refuse the admission or application for a business license because of the "market saturation". By referring to the said Note, they have concluded that Note 1 of Article 1 of the "Law on the Quality of Obtaining Attorney's License" has been implicitly repealed where it stipulates that the determination of the number of legal trainees is in the discretion of a committee consisting of the Head of each Province Justice Administration, Head of 1st Branch of Revolutionary Court and the Head of each Bar Association.

In our view, with broad expression of the legislator, the relevant competition regulations are subject to interpretation on a case by case basis whereas as explained earlier, the Competition Council has the competency to determine the instances of disturbance in the market.

As we are keeping an eye on this controversial case, stay tuned for further developments!

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