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**THE RELATIONSHIP BETWEEN COMPETITION LAWS AND ADVERTISING LAWS****F. Dorri**

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**ABSTRACT**

Competition law and advertising law are regarded as necessities and key factors for success in systems with free market economy. It is common to think that fair competition among production and distribution actors leads to economic efficiency and increases public welfare. This paper aims to study the relationship between competition law and advertising law. In this manner, it investigates different approaches in economy and analyzes schools and laws of competition and advertising. The study suggests the method that offers a constructive role for economic development and progress by providing a realistic approach. In this regard, the researcher recommends the approach resulted from the integration of competition law and commercial advertising that its implementation provides efficiency in resource allocation and efficient production. Research findings indicate that competition law and advertising law are correlated and the integration of these two categories in economic results in the establishment of competition rather than monopoly, and brings dynamic competition and innovation.

**Keywords:** Law, Competition, Advertising

**Introduction**

One of the important and influencing aspects of public law of economy is competition law; a review on the history of economic developments indicates that public principles of competition law are influenced by theories of government and justice. Public principles of competition law, which has been emerged along with economic developments, are influenced by theories of economy and various theories about government because the historical review implies that the deficiency of classical free economy, for example monopoly, and its legal system, was basically revealed after the financial crises of the Interwar and after World War II. Hence, the systems of welfare economic were founded following theories of Keynes. In this discourse, a dynamic government was born and its involvement in economic and social areas is legitimated in the light of theories of socialism and social democracy, the legitimacy of government intervention in the discourse makes welfare state. Therefore, the governments provide the necessary tools to interfere, control, and monitor economy (Harrison, 2000, p.56).

One of the most important legal mechanisms is principles of competition law that makes sense in the context of more general discourse of the public law of economy; analysis of

public principles of competition law encompasses a wide scope.

While a large number of subjects exist in this range, the subject, mainly discussed in this paper, is the relationship between competition law and advertising law. The main reason behind the need for law is the establishment of good order in the market. Persons, authorities, organizations, and institutions want naturally to act in any way they like and do not refuse their desires. In this manner, the main purpose of any law is considered as the determination of rights and limitations simultaneous.

On the contrary, too much emphasis on the limitations and tightening the circle of rights in favor of limitations causes the extinction of humans and takes vitality and innovation. Finding the balance between rights and boundaries is the very expected art of legislators, including advertising legislators. Advertising and competition laws should be so harmonious and balanced that neither clear the way for transgressing the rights of society, disrupting public order, or violating the privacy nor results in self-censorship, and revives the powers of courage and innovation in advertising actors. In this paper, the researcher aims to investigate the principles of competition and advertising laws and evaluate their relationship in economy.

## 1. Principles of Competition Law

### 1.1. The objectives of Competition Law

Although there have been assigned many goals for policies and laws of competition during the history, in general, today, one can count three major goals: a) Political and social goal that emphasizes on fairness in trade and competition, and consequently aimed at taking care of the firm's behavior. The basic elements of the target, which forms the basic ideology of populism, include maintaining the process of competition, providing and ensuring fair competition, and supporting and promoting effective competition. The mentioned school suggests the elimination of unreasonable restrictions on trade to achieve the goals. In addition, populists believe that factors such as trade liberalization and choice of market access are the related objectives to competition (Evenett, 2005, p. 7).

b) Another objective insists on the efficiency of economic activity in commercial firms and counts the efficiency or lack of efficiency of resource allocation, production and service as a characteristic to determine the competitiveness and non-competitiveness. The Chicago school follows this doctrine. Two underlying purposes of this doctrine have led to the formation of two different theories: a theory that insists on resource allocation and a theory that gives the preference to production efficiency. The former is elaborated by experts like Posner, the later by lawyers like Bork (Bork, 1978, p. 107).

Another evolved theory from this school calls for more freedom of manufacturing firms in practices such as horizontal agreements and mergers in beyond emphasis on the efficiency in production regarding the importance of technological and industrial development. In this viewpoint, the release will encourage R & D activities. Although, figures such as C. Duke and David Teyse are the representative of this theory under the title of efficiency and dynamic competition, in fact, the economist Schumpeter has initiated it early in the twentieth century.

c) The third objective is propagated by the fans of development theory. The theory considers economic development, defined as economic growth, as the main objective of principles and policies of competition. This school suggests governmental monitoring and intervention in helping economic firms by tools such as subsidies and merging in order to develop national economy (Singh, 2002, p. 18).

Since this theory encourages the integration of local companies to produce efficiently and compete with strong enterprises from developed industrial countries, the researcher calls his selected approach dynamic competition, the same as Schumpeter and Teyse.

### 1.2. Theories of Competition Law

Classical approach: Classical view on competition law is one of the most important ideas in history; classical theories about competition argue that particular agreements, procedures, and business operations, inconsistent with free competition in market, may be considered as impeding elements for individual liberty of merchants in subsistence and income.

John Stuart Mill, a classic economist, agreed that the doctrine of limitation and prohibition of certain acts of commerce could be justified from the viewpoint of freedom (Mill, 1980, p. 82). In other words, in order to remove the challenges due to compatibility between competition rights (as restrictions to the free market) and individual freedom, the classics attempt to accept the necessity of these restrictions to take the advantages of economic freedoms, and therefore justify the competition laws.

Neo-Classical approach: A kind of change had occurred in economical theories after John Stuart Mill, the change focused on a more accurate and theoretical model of competition. The Neo-Classical model strives to maximize production and distribution of goods and services in a competitive free market and social welfare. Proponents of this model

believe that new and emerging economical firms and businesses can freely enter a market and challenge the existing companies and firms. In general, there should not be any barrier to their entrance into the market. These liberties, which coexist with competition, bring the efficiency of market in terms of production, resource distribution, and dynamics (Galbrith, 2007, p.37). In this context, values such as social welfare and efficiency are featured as well as economical liberties. Therefore, free market and guaranteed free competition will be related to the mentioned values. In fact, this perspective believes that monopolies, anti-competitive procedures, and cartels are inconsistent with efficient market model in terms of production, distribution and allocation of resources. In other words, if one or several commercial and economic firms or companies involve in market activities and no rival company challenges them (because of monopoly), the prices will not increase more than its competitive level, hence, a monopoly price is determined; in this case, goods production decreases and social wellbeing is undermined because the wasted resources has increased.

The approach of Chicago school: some lawyers and economists, which belong mostly to Chicago University, are considered the founders of this school. It is believed that, basically, some of the actions that are considered anti-competitive may encourage competition; Robert Burke is a serious contender for this view, claiming that competition law has fundamentally been distorted. He recalls the real aim of competition law as economic efficiency, consumers' welfare, and supporting the competition, not the protection of rivals and competitors in market. The European Commission is also criticizing the fact that competition law is used to support rivals in market instead of supporting the principle of fair competition (Veljanovski, 2004, p. 153). Overall, the school's approach is that government's interference in the market is more destructive, rather than being constructive. Government's interference in the

form of completion must be limited to a set of particular cases. Accordingly, they must permit many of the business practices that are prohibited. From the perspective of supporters of this school, state intervention in economy in terms of competition law is acceptable, but it should be allocated to limited items and exceptions. They believe that the prohibited cases in today's competition law are far beyond the limited items.

### 1.3. Approach in the Constitution of the Islamic Republic of Iran

Constitution as a picture of the political, social, and economic values structures the bases for legal system of economy. A review on the establishment of constitution indicates that founders and members of constituent assembly were aware of the importance and identification of private property; therefore, serious concerns about the loss and limitation of private sectors and sovereignty of socialism were reported (the detailed report of bebates on the final analysis of constitution, 1985, p. 1534). Despite such concerns rooted mainly in *Fiqh*, the Islamic jurisprudence, and ideas of *Fuqahā*, or Islamic jurists, about the importance of private property, article 44 laid the fundamental bases of the Islamic Republic economy on public and cooperative sectors, and regarded private sector as a supplement to the economic activities of state and cooperative sectors. This picture directs us to a quasi- socialist feature of article 44 that is affected by objective and subjective conditions of our era.

In general case, although the Constitution does not explicitly mention the competition law, some regulations are associated with dealing with monopoly; article 3 says that it is the duty of the Islamic Republic government to eliminate unlawful discriminations and provide equitable opportunities for all. Moreover, in this article, monopolization for the following referents is banned, the referents includes political and economical fields. Responding to the nature of constitutional prohibition against monopolies and analyzing

it based on the foregoing framework will complete this section.

## 2. Advertising Law

### 2.1. Objectives of Advertising Laws

Nowadays, many organizations use advertisements with different goals. Advertising has become one of the most important organizational tools for sales, engaged many people in organizations, and absorbed a large amount of funds.

Keller (2003) outlined advertising objectives as follows:

- Advertising for commercial businesses to sell goods and services
- Advertising for Employment
- Government advertising to inform the public
- Advertising for declarations and local warnings
- Advertising for books, travel, and training courses
- Advertising for financial services, or for recreational activities
- Organization advertising to announce the results
- Advertising for therapeutic goods and services
- Personal ads for sale of personal items
- Political campaign for people to vote in elections

Advertising as a form of impersonal relation is performed by a certain sponsor, using mass media, in exchange for the payment of money to persuade or influence the audience. Therefore, the ads consist of six elements: First, it is a form of relation. Second, because it is collective, it is impersonal; it is not created for a particular person. Third, they pay money for advertisements. Fourth, sponsors (promoters) are identified. Five, advertising will be sent by using the mass media. Finally, advertisements are sent to persuade and influence audiences and consumers (Kotler, 2001).

Advertising is any type of presentation and propagation of ideas, goods, or services that is offered by an advertising unit, an individual, or an institute, and requires payment. Advertisements are the inseparable part of consumption in the twentieth century and the most important show of the contemporary world. In addition to the importance of advertisements in cultural context and consumer research, it is an important field in management studies. Advertising is also a crucial element in brand marketing.

### 2.2. Theories of Advertising Law

**Uses and gratification theory:** it is an approach to understand the motivations of audiences for choosing media and to recognize why people actively seek out specific media to satisfy specific needs. The theory assumes that users choose media that will satisfy given needs consciously or unconsciously. Undoubtedly, understanding the motivations that lead users to choose a media (specific content or specific program of media) is among the goals of communication studies experts in order to understand the audience. Therefore, the basic assumption argues that audience more or less actively seeks content that provide the most satisfaction. The degree of satisfaction depends on individual needs and interests. The more people feel that the actual content satisfy them, the more is probability to select that content (Tsai et al, 2007).

**Persuasion, encouragement, and changing the attitude of audience:** Persuasion is one of the major and constant techniques and a collection of procedures based on two theories, persuasion and encouragement.

**Persuasion theory:** Persuasion is a two-way process that focuses on dynamic persuader and persuaded person; in the process, people respond to the persuasive element that helps them to satisfy their needs. Therefore, the persuader should be aware of the persuader's needs (Dehghan Tarzjani, 2008).

**Hierarchy of Human Needs Theory:** Psychological attractions cause acceptance

and draw attention to the advertisement; hence, advertisers can easily express their opinions. Exactly, the same as importance of selection of the topics, advertisers must be aware of emotional and psychological needs and interests of their audiences and investigate the ways that motivate audiences in order to achieve their goals. In other words, the theory argues that an individual should take a certain amount of their energy in a certain group. The reason of humans' behavior is hidden in their needs and psychological deficiencies; this depended strongly on the severity of the individual needs and shortages, researchers have tried to identify the basic needs of individuals and provide them the list (Maslow, 1957, p. 38).

**Agenda-setting theory:** Agenda-setting is a process through which mass media transfer the relative importance of different subjects to users. The more media pays attention to the event, the more importance is devoted to it by users. The media's words do not say people what to think, but says them to think on what (Vindahl et al., 1997, p. 374).

### 2.3. Commercial Advertising Law of Iran

So far, efforts have been made to draft a law on advertising. Among them, we can mention two examples; first, Ministry of Culture and Islamic Guidance has ordered a team of researchers in 1997 to study the subject, the results, along with explanations and justifying reasons, were published entitled "Introduction to draft of advertising law ". The draft consists of 77 clauses.

The second attempt took place in March 2001 in which the press and propaganda Department of Ministry of Culture and Islamic Guidance regulated "draft of advertising law of the Islamic Republic of Iran" in 110 clauses using previous research. The proposal has been reduced to 57 clauses by the next revision in March 2002.

However, as noted above no special law has been ratified for advertising by the Islamic Consultative Assembly yet. Nevertheless, there is legislation in this area, which

considered as law approved by the legislature. In addition, "the revolution council" session dated 27.12.1358 has ratified "regulations for establishing and monitoring the procedure and activities of advertising". The importance of these regulations, which are still valid and authentic, becomes clear due to two points:

First, although the ratification has not been approved by Islamic Consultative Assembly, therefore cannot be called law and considered as an "ordinary law"; since the administrative law of The Council of the Islamic Revolution belongs to the period which legislature did not established, it is regarded as ordinary law, and authentic. In other words, the validity of this "regulation" is the same as administrative law of Revolution Council and the laws that have been passed by the Islamic Consultative Assembly; only be abrogated by parliament act and guidelines, circulars, and regulations must obey it.

Second, this administrative law is public, in terms of subject matter, and includes all the media. Clause 15 of the mentioned administrative law claims: "Advertisings published in mass media (radio, TV, cinema, newspaper, magazine, annual, and so on) Subject to the provisions of this administrative regulation." Therefore, not only press, radio or television advertisings but also all "advertisings published in mass media" are required to comply with these regulations. Ignoring the weak and strong points of its contents, the clause has established a single system governing all types of ads by articulating the name of all media of its age and mentioning "so on" has not excluded any public advertisement from the rule.

It is noteworthy that five years after the ratification of this regulation and the establishment of the Islamic Consultative Assembly, the Parliament has recognized the mentioned administrative law in clause 19 of the Press Law (approved March 1985) and the press was required to follow its 12<sup>th</sup> clause.

This clause has decreed: "In compliance with clause 12 of the administrative law of establishing and monitoring activities of

centers advertising and related clauses, journals are allowed to publish commercial advertisements including compliment of goods or services that are performed by official research centers.”

On the other hand, in some parts of “Electronic commerce Law”, which ratified in 2003 by Islamic Consultative Assembly, a chapter id devoted to the laws of advertising. However, we should not forget the limitations and subject matter of these laws. According to clause 1 of “Electronic commerce Law”, “this law consists of principles and regulations for secure and easy exchange of data in intermediaries and cyber mediaries using new communication systems.” Therefore, the mentioned rules in this clause is not practicable everywhere.

Beyond above rules, various administrative laws have been proposed for commercial advertisement. Most of these administrative laws have been approved by “Central Committee of the advertising agencies” base on clause 17 of “Administrative law of establishing and monitoring the advertising centers”.

Some of them are also ratified by Board of Ministers or institutions like Public Culture Council, or The Supreme Cultural Revolution Council. In any case, due to the large number of regulations and the consecutive and rapid changes, it does not need to retell it.

### **3. The Relationship between competition laws and laws of advertisings**

#### **3.1. The Integration of Competition Law and Laws of Commercial Advertising**

Competition laws and laws of commercial advertising, which are fields of International Business Law and International Economic Law, has appeared in the late years of 19 century and then gradually, with a gap of 50 years in European countries, opened its place. Countries with “systems of free market economy”, it is believed that the market should determine and define their own governing regulations. Rules and principles of

equitable, free, and fair business competition are among that regulations leading to the growth and development of free and efficient trade. While the regulations of competition law are derived from the context of free market and its known principles, non-commercial and non-economic factors, outside the market regulation, are not involved in determining the regulations, and consequently, they lead to the increase in efficiency and boom of market. Establishment of such a field of law in any country is a sign of progress and all-round development of the country.

Free competition principle, as an accepted principle in free market economies, bases on creating fair and equal conditions for all traders in the market, removing barriers to free competition, and coping with monopolistic, even dual or multiple, business practices on the market.

Free competition principle is he most important principle in economic systems; it bases on simultaneous consideration of competition law and rights for commercial advertising in the market. The principle was followed with three goals after these changes: 1) Integration; 2) Equity and fairness; 3). Efficiency (Shekouhi, 2002, p. 2).

**1) Integration:** In economy, integration refers to the combination and unification in market and opening them on others. This is possible with the removing barriers to free trade, encouraging business and economic organizations to expand the scope of their commercial activities to other markets, and fulfilling the fundamental principle of “free movement of contributing factors in the market such as persons, goods, capital and services”. The principle requires the elimination of all contradictions and differences in national rules governing market and the dominance of the same, common, and uniform principles and rules in the market induced by the collective will of countries seeking integration. In addition, integrations may extend as far as the Europe Union countries that remove all political boundaries between members of integration treaty; therefore, the only remaining boundary will be

the line of members and non-members. In this case, they may adopt single economic and commercial policies regarding the outsiders that is performed in all members of integration treaty (Evenet, 2005).

**2) Equity and fairness:** Its purpose is providing equal opportunities for economic and commercial actors, supporting the weaker businesspersons and small and medium businesses to continue business activities, protecting the rights of consumers. In this regard, it is important to do the same treatments with foreign active businesspersons and commercial entities in the single market and regulate relations between private and governmental institutions. Therefore, the role of government in supporting the small, medium-sized, and weak financial institutions is very important because these groups increase the economic growth in weak counties. Moreover, the principle of “the protection of consumer rights” and “the balance of supply and demand” should be considered.

**3) Efficiency:** It refers to the optimum utilization of the effective factors in production, increasing efficiency and manufacturing enterprises, inventions and innovation in the supply of new goods and services, increasing the quality and quantity of supplied goods or services, motivating against commercial competitors, promoting the level and choice of consumers, and reducing prices. It plays an important role in increasing the efficiency and productivity of the market and its growth and development (Singh, 2002).

### **3.2. The Effects of Considering Competition Law and Advertising Laws simultaneously**

#### **3.2.1. Balance in Competition**

It is necessary to provide access to the competition and advertising rights for all firms and companies in order to establish the balance of perfect competition. In the case of perfect competition, the prices are determined with respect to the numerous buyers and sellers of a particular product in market. In other words,

the intersection between the curves of supply and demand for products of particular industry determines the price. The best example of this situation can be seen in the stock exchange and the market of agricultural products. Each of the firms will continue their economic or production activities until the product or commodity price - which is also the marginal income - is equal to marginal cost. Because there is a lot of competition between firms, each of them tries to balance the level of its quantitative production in accordance with volume level in such a way to minimize total costs. In this situation, the firm's profit is normal, not ultra-competitive. If changes in the market lead to a situation in which a manufacturing firm sells its products at a higher value than average total cost, a competitor or new firm will enter the commodity markets and will reduce the price of goods at the average total cost (UNCTAD, 2007).

#### **3.2.2. Competition rather than Monopoly**

Operation of competition laws and laws of advertising in market results in the competition and prevents monopoly. Perfect competition is conditioned on one side or on the end of the broad extension of competition spectrum. The other side of spectrum belongs to monopoly. In fact, the perfect competition does not exist in reality and it is an abstract phenomenon. In this manner, a phenomenon that can be called exact monopoly is less in a market. Accordingly, each of firms shares an amount of power or exclusive power in reality. In monopoly, only one seller exists for a good, with no substitution. Although the process of determining the price and quantity of goods in monopoly is similar to perfect competition, the results, or to say clearly the effects, are different. One of the relationships between completion laws and advertising laws is the prevention of monopoly (Margaret, 2000).

#### **3.2.3. Dynamic Competition and innovation**

The enforcement of both competition law and advertising law brings about dynamic and innovative competition in market. Along this line, creativity becomes the basic element of

production. Dynamic attribute, as an expression for describing various activities in production such as product differentiation, is the reaction to the preferences, tastes, consumers' interests, and market's new opportunities. Exactly contrary to stable competition, which might be found in course books, the dynamic competition is intuitive, concerns the strict requirements, and needs consumer. The dynamic attribute depends on the innovative aspects. Research and development activities that are at the heart of this competition led marine transportation from traditional sailing to a more modern style with the invention of steam engine. Invention in electronic industry has revolutionized communication and information exchange. Contrary to stable competition in which given consumer demands are source for economic analyst, in the context of dynamic competition, desires and needs of consumers is the aim of studies and investigations by entrepreneurial firms.

Teyes et al. regard the consequences of the process or activities as two types of explosions: explosions that cause creation and entrance of new firms in market and the promotion of competition. Implosions that causes integration and market concentration (Singh, 2002).

### Summing Up

Competition law is the child of free market economy because flaws in the free market and

its private laws lead to creation of general and monitoring laws to ensure fair competition. Overview of competition law and the laws of commercial advertising in this paper has clarified that primarily the legislator pays no attention to principles and rules of competition law and the laws of commercial advertising related to issues of businesspersons, sellers of goods, information suppliers, and providers of electronic and information services. They pay only some attentions to the laws of consumers. Highlighting competition law and advertising law balance the effective factors in a market because the main purpose of competition and advertising law is the consumer welfare and protection of competition.

Integration of competition and advertising laws results in eliminating or controlling monopoly on commercial activities, and prohibiting anti-competitive behavior. These behaviors include limiting the destructive market practices, inhibiting and impairing free and legitimate competitions, restraining or prohibiting public access to information for all persons equally, preventing the free movement of information, goods, electronics services, and capitals in markets, denying the the persons right to enter commercial activities freely, prohibiting formation of cartels and integrations that result in the loss of monopoly and competition, refusing agreements leading to the split of markets, principles, and rules of competition and advertising laws.

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