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Constituent elements of prohibited vertical agreements in the competition law of Iran and the European Union

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Abstract

The objective of the investigation is to analyze the constituent elements of vertical agreements prohibited by Iran's competition law, in accordance with Chapter IX of the Law on the Implementation of General Policies and in accordance with Article 44 of the Constitution and, as set out in European Union competition law, Article 101 of the Treaty on the Functioning of the European Union. By vertical agreements it can be said that one of the types of agreements is wanted in the competition law. Any reference between natural or legal persons in the longitudinal direction (whether top to bottom or bottom up) that is not close to the consumer's interest is agreed. These agreements may include free clauses that are not compatible with the objectives of competition law. Methodologically, this is a documentary research close to comparative and legal hermeneutics. It is concluded that, to prohibit vertical agreements, they need to have the anti-competitive object or effect and also have a tangible impact on the closure of competition on the market.

Keywords: Competition law; prohibited vertical agreements; anti-competitive effect; elements of agreement; tangible impact.

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Elementos constitutivos de acuerdos verticales prohibidos en la ley de competencia de Irán y la Unión Europea

Resumen

El objetivo de la investigación consiste en analizar los elementos constitutivos de los acuerdos verticales prohibidos por la ley de competencia de Irán, de conformidad con el Capítulo IX de la Ley sobre la implementación de políticas generales y de conformidad, con el Artículo 44 de la Constitución y, con lo que se establece en la ley de competencia de la Unión Europea, Artículo 101 de la Tratado de Funcionamiento de la Unión Europea. Por acuerdos verticales se quiere significar a uno de los tipos de acuerdos en la ley de competencia. Se hace referencia a cualquier acuerdo entre personas naturales o jurídicas en la dirección longitudinal (ya sea de arriba hacia abajo o de abajo hacia arriba) que no esté cerca del interés del consumidor. Estos acuerdos pueden incluir cláusulas restrictivas y no compatibles con los objetivos de la ley de competencia (objetivos económicos y no económicos). En lo metodológico se trata de una investigación documental próxima al método comparativo y a la hermenéutica jurídica. Se concluye que, para prohibir los acuerdos verticales, es necesario que estos tengan el objeto o efecto anticompetitivo y generen además un impacto tangible en el cierre de la competencia en el mercado.

Palabras clave: Derecho de la competencia; acuerdos verticales prohibidos; efecto anticompetitivo; elementos del acuerdo; impacto tangible.

Introduction

In many markets, manufacturers and creators of products do not, for economic reasons, directly supply the product themselves, but do it through wholesale distributors or retailers. This creates various types of contracts between these firms, which are recognized in the competition law as “vertical agreements.” On vertical agreements, on the other hand, horizontal agreements between the parties to the agreement are not mutually agreed, and one of the parties to the agreement is in the process of reaching the consumer in a position closer to them. In other words, in vertical agreements, two or more business entities agree to trade partners at different levels (upstream or downstream control) (Abbott, 2008; Eur-Lex, 1991;1972).

Vertical agreements cover a very large volume of global trade; vertical agreements such as contracts for the sale or re-sale of goods, contracts for the transfer of technical or technological know-how or bonds, may contain restrictive clauses. And are incompatible with the objectives of competition law. From here, the discussion of vertical agreements is forbidden, for example, an agreement on the condition for the determination and fixing of resale prices, the conditions for the division of the market and the restrictions on distribution (exclusive distribution and selectivity) And customer allocation, exclusive deals and price discriminations (Abbott, 2008; Dovies, 2003).

After identifying the elements of vertical agreements, regardless of the many examples of such agreements, it is necessary to consider the elements and conditions on which vertical agreement is based, a vertical agreement that is prohibited and disruptive to competition. This is becoming increasingly important because some kinds of agreements, such as agreements to establish maximum resale prices, are prohibited only if they are prohibited. In this regard, the article attempts to examine elements of the prohibition of vertical agreements on competition rights between Iran and the European Union in order to allow vertical agreements in the competition rights of Iran and the European Union regardless of their form and subject, whether they are prohibited or Their permission is judged (Gerber, 1998; Ghamami *et al*., 2010).

The constraints on vertical agreements and other types of agreements are divided into two broad categories of constraints and so-called suspect limitations. The first category, which has a purely anti-competitive character and conflicts with the objectives of competition law, is considered to be purely constraints and intrinsically forbidden agreements. In fact, their risks and risks are high and they are viewed negatively; the latter depends on the economic conditions of the society and the nature and conditions of each agreement, legitimacy and competitiveness, or approaching the strict limits, as the case may be. These types of vertical agreements are merely considered to be suspects, and in this category a rule called rationality is raised (Gholami and Rezapour, 2016).

1. Concept and types of vertical agreements are prohibited

In this context, we will ban the concept and the types of vertical agreements. In this regard, first, we will examine the forbidden vertical agreements, and briefly illustrate the examples, and then we will study the constituent elements of the forbidden vertical agreements.

- **The concept of vertical agreements is prohibited:**

In this context, we will examine the concept of banned vertical agreements in Iranian law and EU law.

- **The rights of Iran**

Article 44 of the Law on the Implementation of General Policies, and Article 44 of the Constitution, adopted on 25/06/2008 of the Expediency Council on prohibited agreements on competition law: "Any collusion by agreement, agreement or agreement (whether written, electronic, oral, or practical) between individuals who pursue one or more of the following ..."

According to the aforementioned article, the essence of the prohibited agreements in Iran's competition law is the question of collusion that this collusion may appear in various forms, such as contract, agreement or understanding. (The purpose of the contract in the aforementioned article is the concept referred to in Article 183 of the Civil Code regarding the contract: "A contract means one or more persons commit and agree to one or more other persons."

Since each contract involves a subscription element (agreement), but any agreement and agreement are not necessarily agreed (such as moral and honorary agreements). In the context of the development of the concept of prohibited agreements, any agreement shall be inclusive if other conditions are met. Matter known. Also, the term "understanding" has been used in this article, which seems to be the subject of a coherent and collaborative process between several individuals, and the insertion of this issue both in terms of the difficulty of proving the existence of an agreement and in view of the fact that collusion may exist for the common behavior It looks like positive.

The Iranian legislator has nowhere provided a distinction between horizontal and vertical agreements, but it can be stated in principle that in Iran's law there is no collusion (including consensus or agreement) between several persons who are not in close proximity to the consumer. A vertical agreement is considered that some of these agreements are permitted, while others are prohibited under certain conditions. In other words, if there is a vertical relationship between the parties to the agreement (such as the relationship between the manufacturer and the seller), the agreement between them is called vertical agreement.

In the last word for verifying the verb vertical agreement, it is necessary to agree primarily on a number of parties (which, of course, the legislator, in article 44, also considers the agreement to be an agreement), and secondly, the parties to the contract establish a vertical relationship in the vicinity of the consumer.

Be It should be noted that there is a controversy over whether the legislator in the article cites all the undesirable effects of anti-competitive

collusions, that is to say, the cases mentioned above are either expressive or allegorical. It seems that, in view of the objectives of competition law, which ultimately leads to justice, balancing and increasing efficiency in various economic, social and other spheres, it should be noted that the abovementioned cases are not extinct, and any work contrary to these objectives is prohibited. Indeed, the uniqueness of the effects of anti-competitive practices on a number of specific issues would be inadequate to the rules of competition law. The common paradigm in this article is that they are all in control of the market conditions and the various stages of production and distribution. Whenever such collusions completely or to a large extent lead to a loss of market equilibrium and a price control system, and as a result of the degeneration of the market incentive system, the relevant agreements should be considered as prohibited and anti-competitive agreements.

2. The rights of the European Union

The agreement in the EU law implies coordination of the parties' intentions, so in this sense, in the EU law, the relationship of agreement to the contract, the public and, in particular, the absolute agreement with the general nature of the contract, in such a manner that each contract implies a kind of agreement, but Any agreement does not necessarily mean a contract. Therefore, in the concept of agreement, the agreement is not mandatory, but in terms of EU law, moral agreements are also agreed upon, but an agreement that is not considered a contract due to a lack of legal and binding legality.

Therefore, it can be claimed that the agreement includes all contracts, agreements, treaties, existing procedures between the parties and the memorandums. In this sense, the agreement should indicate the conformity of the parties' personal intentions with which the coordination has been made by the parties. Establishing a co-ordination between the parties' intentions can be implicit or explicit, but it is conditional on the free will to co-exist in the coordination of the truce.

If an agreement is reached in circumstances where it cannot be due to the free will of the parties (such as when the agreement is made by the general order), the agreement does not in fact exist in the true sense of the word (Rashvand, 2011; Nasehi, 2015); the following are the result of the following: first, the coordination of the will of the parties must be in accordance with the will of the parties to reach the determined ends, and the mere co-ordination between the will of two persons is not colluding. Second, it is necessary that unilateral will, unless explicitly or implicitly accepted by the other party, be deemed unconnected and, in this regard,

is not subject to any restrictions or safeguards for specific anti-competitive agreements. In this regard, attention is also given to Article 101 of the Treaty of the European Union. The article stipulates: "All agreements between undertakings, decisions by associations on undertakings and concerted practices which may affect trade between Member States ..."

Third, it is necessary for the truth of the title of "agreement" to be achieved by the common knowledge and intention of the parties. Therefore, a harmony in which the mutual knowledge and intention of the parties is not met is not conceptually covered by the term "agreement". In the same vein, Article 101 of the European Union Treaty lists the term "collective actions" and enshrines them independently as safeguards for certain anti-competitive rules, since the fundamentals of collective action and non-compliance There is a common science and intent.

After clarifying the concept of an agreement, it can generally be said that vertical agreement in the competition law refers to all agreements that occur between several non-trading companies. It should be noted that in this section, in terms of the precise definition of "vertical agreement", we tried to distinguish between the concept of an agreement with unilateral decisions as well as a common procedure, but in view of the fact that in EU law, the prohibition of agreement, unilateral decisions and procedures If the other conditions are identical, one can state that the vertical agreement in its own meaning includes all forms of collusion, that is, an agreement and common procedure between several persons with a non-latitude relationship.

Therefore, a series of agreements that bring the product of either intermediary or final product from the stage of production to consumers, vertical agreement In other words, the main criterion in these types of agreements is the non-reciprocity of the parties to the contract in the vicinity of the consumer, whose value is in relation to the horizontal agreements, which in such agreements, contrary to the horizontal agreements, one of the parties to the positioning agreement is closer to Consumer (Ghaffarifarsani, 2014).

Article 81 of the EU Treaty stipulates that "any agreement, decision or activity whose object, purpose or effect is to prevent, restrict or distort competition in the common market is contrary to the common market and prohibited "As it is clear in the treaty, the subject matter of the ban, agreements and anti-competitive measures is not subject to the existence of a kind of contract. Concerning the examples and the types of such agreements (according to paragraph 81 of the treaty), the scholars have the idea of the allegory of these cases, and according to judicial practice, these aspects are not of an enduring nature.

3. All vertical agreements are prohibited

In this section, we will briefly mention the types and examples of vertical agreements, and we will explain each one.

- **Determine the minimum resale price:**

The most basic exemption of vertical bans is to determine the minimum open selling price. This type is an agreement between the manufacturer or supplier and the distributor that the price of the product will not be lowered to a certain degree in resale. Today, price fixing agreements (minimum and maximum limits) can be subject to a ban. In fact, both Iran and the European Union have a tendency to disregard such vertical agreements, and such agreements cannot be considered dogmatic, anti-competitive.

4. Exclusive deals

An exclusive deal is an agreement whereby the buyer is required to purchase all or part of his or her own needs from a vendor, or the supplier undertakes to sell all or part of its products and services to the deal. In assessing these agreements, issues such as the dominant position or major market power, the existence of anti-competitive effects or defenses and justifiable causes are considered. In many countries, including European countries, justifiable reasons exist for exclusive deals. The most commonly accepted reason for this is to reduce costs and increase economic growth. In Iran's law, article 45 of the law on the reform of the fourth program has stipulated in the same field, the transaction is anti-competitive and prohibited on the condition that the opposing party refuses to deal with the competitor.

- **Restrictions on distribution**

In many cases, manufacturers distribute their products through sales agents, and this creates a sort of vertical agreement. In such agreements and contracts, there may be restrictions on the other party; for example, the manufacturer requires the distributor to deal with a particular person or distribute the product in a specific and special constraint. Restrictive distribution agreements include a variety of options, including the creation of regional constraints or consumer-related restrictions, selective distribution agreements.

- **Discrimination in price**

The most obvious form of anti-competitive behavior in pricing is to determine the different prices for the same products for consumers. Therefore, price discrimination means selling products of the same or similar prices at different prices without any justification. In many legal systems, price discrimination is considered to be anti-competitive in nature and merely considered to be sufficient to prohibit it. From the point of view of social justice, this issue can be examined and any kind of discrimination at the price is a kind of disruption to consumers' rights and is contrary to the principle of justice.

5. Elements forming vertical agreements are prohibited

The constituent parts of the banned vertical agreement can be expressed in terms of three elements of agreement or decision or action, the existence of two or more independent business entities, and the vertical relationship between the parties to the agreement (business activists). We will study these elements in this section.

- **The existence of an agreement or decision or action is coordinated**

In Article 101 of the EU Treaty, there are three categories of agreement, decision and practice that are identical in terms of a ruling. Although, as has been said, vertical agreements are literally merely an element of agreement, but in terms of terminology and agreement, unions' decisions - it should be noted that, as will be discussed in more detail later, in EU law deliberately decisions Unions are not subject to unilateral decisions, but banned under bilateral or multilateral decisions - and include coordinated action.

- **Agreement**

As stated earlier, the agreement can be defined in accordance with the joint intention of several individuals to conduct a particular conduct. It should be noted that, as stated in Iranian and EU law, explicitly prohibited agreements (Article 44 Law on the amendment of general principles of Article 44 of the Constitution and Article 101 of the EU Constitution). In this sense, the essence of the agreement is the existence of common intention or purpose. (Which is the subject of an agreement on joint actions). To reach an agreement, it is necessary to involve the will of several individuals. (Which is the subject of an agreement on unilateral decisions) has, in this sense, a conceptual understanding of the contract (Article 44 Law on the amendment of general principles of Article 44 of the Constitution) and all binding agreements, moral or honorable, tacit, explicit, Total and by

third parties, because it is obvious that the place of the ban is the effect of agreements, not their form. - Agreed agreements are agreements in which a set of contracts is made for a certain period.

The European Court of Justice has made it clear in the context of such agreements that such an agreement has the effect that the court is entitled to treat a set of agreements as a single agreement, and that, if the parties intend to conduct a given market conduct, Convict not all aspects of the agreement - (Vakili and Hossein, 2010). In other words, it is not necessary for an agreement to be obtained from the consensus of the parties, but it may be due to a third party among business activists regarding the conduct of the conduct A specific agreement may be made; Also, agreement may be reached by the employee Even if they do not have the authority to conclude such agreements take place (Rodger and Macculloch, 2009).

- **The decision**

The decision is a one-way operation issued by trade and trade associations, a group of guilds or business entities (Rashvand, 2011), and according to Article 101 of the Treaty on the Functioning of the European Union, if other conditions are met. Can be considered as antitrust and prohibited decisions.

These decisions have roughly identical rulings. As discussed in the agreement, what is the place of the ban is the effect of decisions, not their form; therefore, the decision by a legal person or non-legal person, as well as the shape of the decisions made, is not important in EU law. In the same vein, the European Court of Justice, the German Insurers' Association's decision regarding its members to raise a certain percentage of premiums, is covered by Article 101 (Shokouhi, 2002).

The nature of the decisions should differentiate between members who accept such decisions and those who do not accept such decisions. Undoubtedly, such decisions, regardless of the acceptance or non-acceptance of some members, will be subject to Article 101; however, it should be noted that if these decisions are made by the members, the decision of the union will be withdrawn from the decision form in the form of an agreement; of this The guarantee of specific actions related to anti-competitive agreements to the parties to the agreement will be imposed on the accepting members. Thus, the guarantee of violations of the rules of competition law in this case, both for the unions and for the attention of these firms (Rodger and Macculloch, 2009).

Also, when unrepresented business activists will explicitly or implicitly accept the nature of Union decisions, an agreement will be made, and then the guarantee of performance related to anti-competitive agreements will These non-member members will also be imposed. On the contrary, it seems that those members who have accepted the nature of the above

decisions cannot be considered as agreements, thus, it seems to be against the activists who They cast a negative vote on the decisions and later accept it, impose a guarantee of performance Particularly, the parties to the anti-competitive agreements should be disregarded. - In any case, it should be noted that the decision of the Union, regardless of the acceptance or non-acceptance of some members, will be subject to Article 101 of the Treaty on the Functioning of the European Union.

An important issue with regard to union decisions is that, although these decisions, in particular where the union has a legal personality independent of its members, is essentially one-sided action - the unilateral action of the voluntarily and individually acting decisions of the business community An independent and one-way form is taken. In the EU law, Article 102 of the Treaty on the Functioning of the European Union, refers to the unilateral decisions of commercial activists - but in EU law, in the context of specific restrictions, prohibits unilateral decisions on one side and, on the other hand, to prevent The members of the activists' escape from the guarantee of the performance of competition law in the form of the legal personality of the union, union decisions are independently and in the form of two-way or multilateral decisions to members in the event of other conditions being banned.

It should be noted that the condition for the prohibition of unilateral acts of commercial activists in EU law is the dominant position of commercial activist and the commercial use of this dominant position by the employer. Article 102 of the Treaty on the Functioning of the European Union stipulates:

> Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Concerning the decisions of the unions in Iran's competition law, it should be noted that the law on the implementation of general policies of Article 44 of the Constitution does not discuss independently the decisions of the unions, and in Article 44 of that law only the collusion has been effected through an agreement, agreement and agreement and like the Treaty on the Functioning of the European Union, there is no independent discussion of union decisions. Nevertheless, in the competition law of Iran, unilateral decisions were made that these decisions were more restrictive than the rights of the European Union and could also be attributed to natural and legal persons. Therefore, if the union does not have a legal personality, only if the members of such decisions, whether from members or non-members, appear to be in the form of a contract, agreement or agreement on the condition of collusion subject to the prohibition of Article 44, and if the union The legal personality, in addition to the guarantee of the implementation of this law, shall be subject to the guarantee of performance

of competition law against the union itself in the form of unilateral, anti-competitive decisions under Article 45 of the Criminal Code of the United Nations.

- **Harmonious action**

Article 101 of the Treaty on the Functioning of the European Union prohibits coordinated action in the presence of other conditions.

In the beginning, collective action was used to get rid of the particular difficulties of the existence of an agreement among business activists (Ghaffarifarsani, 2014). But the collective action and the coherent action gradually became independent of the concept of an agreement. It was argued, therefore, that the reason for the distinction between the concerted practice and the agreement in Article 101 of the Treaty on the Functioning of the European Union was that there was a form of cooperation between the business community without the need for an agreement in the true sense of the word, Disruptive competition is avoided (Imperial Chemical Industry Commission, 1972).

In other words, the purpose of including prohibitions on coordinated actions, in the presence of other conditions, is the inclusion of competition rules in relation to those business entities, although there is no agreement between them, but how they behave because of their market behavior through behavior Directly or indirectly with other companies, is participatory (Jones and Sufrin, 2004).

Concerning the coordinated action, it should be noted that this concept has been accepted in the Iranian law under the title of the understanding, and Article 44 of the Law on the Implementation of General Principles of Article 44 of the Constitution: "any collusion by agreement, agreement or agreement (whether written, Electronic, verbal or practical) between individuals who have one or more of the following effects, so that the result is to disrupt the competition".

It has paid attention to this. In other words, in Iran's law, if there is a practical understanding between business activists who are consistent with the operation Between them, it is proved that, in the presence of other conditions, it will be subject to the guarantee of certain performances of the competition law. However, in Iran's law, it is necessary to be aware of another and deliberate behavior in the presence and absence of a justified reason for this harmonious behavior in terms of the truth of the title of understanding and the existence of a consistent and consistent behavior for the truth of the title "practical".

- **There are two or more independent business entities**

In the Treaty on the Functioning of the European Union, the term "Undertaking" has been used where the treaty has not been defined, but

the judicial procedure in interpreting this term is the existence or absence of a legal personality, the person or legal personality, the personality of the public right or its privacy, and that Its basic purpose is profit-making, or no, has no effect on the truth of this concept on economic activity (Italy V. Sacchi case, 1974, 2CMRL).

Thus, economic activity can be regarded as any independent existence that appears in the market, in this sense, the economic activist will have a relative and material meaning. - Relative to the active concept of business means that the business actor may be subject to competition law through part of his activities, while his other behaviors are beyond the scope of competition law. (Vakili and Hossein, 2010), and the material nature of the active economic concept means that, regardless of the active economic character (the legal personality of having or not having a person or a legal person, being or not being a state) Some of his activities in the area of the same activities are subject to competition law (Rashvand, 2011; Sadeghi, 2007).

Basically, vertical agreements (meaning, including self-agreement, understanding, union decisions, and concerted action) mean that there are two or more independent business entities. The condition for the independence of business activists to exclude agreements between business activists and their business activists is to include vertical agreements. For example, if a parent company concludes an agreement with its subsidiary, this agreement cannot be understood as an agreement in the true sense of the word because the nature of the agreement is not between two independent business entities, but in the unilateral decision of the parent company to the subsidiary.

Another distinction is the recognition of the active business autonomy in terms of attribution of responsibility, so that in the wind, each active company in the economic complex is responsible for the behavior of other activists in the collection (Vakili and Hossein, 2010). Therefore, whenever a subsidiary commits antitrust action - such as vertical agreements - it is the parent company that will be liable, regardless of location outside the scope of the law relating to that specific prohibition.

- **Vertical agreement between the parties**

The two conditions that have been mentioned so far, that is, the condition of the existence of an agreement, decision or action, and the condition of the existence of two or more independent business entities, is necessary to realize the concept of an agreement in the sense of itself. But in order to agree to a vertical agreement, it is necessary to have another condition, which is the verticality of the agreement between the parties. As discussed earlier, the verticality of the parties' agreement implies that the distance between the parties to the agreement to the consumer needs to be different,

otherwise the agreement will be horizontal. Therefore, it is not necessary that the agreement is necessarily made between the manufacturer and the seller, in order to reach the vertical agreement, but the agreement between the manufacturer of the main product with the intermediate product manufacturer is also considered as a vertical agreement because of the distance between the consumer and the absence of the parties to the agreement. .

- **Having an issue or anticompetitive effect and a tangible impact**

Article 101 of the Treaty on the Functioning of the European Union stipulates: "Agreements between business activists, decisions of trade unions and collective actions that may affect trade between member states and those whose object or effect is to prevent, restrict or distort competition in the domestic market ..."

Therefore, based on the foregoing, one of the provisions of the prohibition of vertical agreements is that these agreements have either anti-competitive or counter-competitive effects in the market. In this paragraph, we will examine these two issues.

- **Having an anti-competitive subject**

Having an anti-competitive theme means that the agreement itself has an anti-competitive effect in such a way that the parties intend to compete in the market. The intention of the parties in the matter of an agreement or as a direct intention (in such a way that the parties have deliberately intended to limit competition during an agreement) or indirectly (that is, the provisions of the agreement of the parties in such a manner that, although the parties deliberately intended to restrict competition But the terms of the agreement are such that they knew or should have known that the agreement would impede competition in the market) is conceivable (Jones and Sufrin, 2004).

Therefore, when an agreement is in such a way that the parties intend to conclude such an agreement, restrict the market behavior or trade policy of one or more parties or damage to third parties, whether competitors, suppliers or buyers, the vertical agreement, the anti-competitive agreement to Considering the issue is anti-competitive. It should be noted that in the case of coordinated action, because of the co-ordination of action in terms of anti-competitive effects, and the former agreement did not exist, in Iran's law such a situation was called practical agreement (Article 44 of the Law on the amendment of general principles of Article 44 of the Constitution) Speaking about anticompetitive matter, harmonious action is a matter of solving this issue every year.

- **Having an anti-competitive effect**

An agreement may not conflict with competition in the market, but the implementation of the agreement would have anti-competitive effects, including immediate effects, potential effects and total effects - in such a way that there may be no anti-competitive effect agreement, but a set of agreements would have such an effect In this case, the vertical agreement is considered to be prohibited (Ritter and Braun, 2005).

In the analysis of the anti-competitive effects of vertical agreement, it is necessary that the market conditions and economic contexts governing it be carefully considered, since these agreements are not in conflict with competition and do not compete merely in terms of the effect, and the anti-competitive effect in The market is only possible with the precise knowledge of the market and the economic context that governs it.

The point that is very important in this regard is that, in order to achieve the prohibition or not to ban the vertical agreement, the agreement is primarily anti-competitive, and if the subject of the agreement is not anti-competitive, then it is time to examine the effects of the agreement arrives . In other words, whenever the terms and conditions of an agreement can be understood by the parties to limit competition in the market, there is no need to examine the effects of the agreement (Jones and Sufrin, 2004).

Another point that needs to be addressed is that the anti-competitive effects of vertical agreements can include all types of vertical agreements, including agreement, decision and action coordinated. In other words, coordinated action can only be considered as prohibited if it has anti-competitive effects, so if an agreement is reached that has an anti-competitive object, it will be implemented in such a way that competition cannot be restricted in practice. It is anti-competitive. The subject matter of the agreement is prohibited but coordinated action will only be prohibited if it is implemented in a manner that effectively disrupts the competition on the market.

- **Have a tangible impact**

It was said that it would be necessary to prohibit a vertical agreement or be subject to an anti-competitive agreement, or that the agreement would have an anti-competitive effect on the market. Regarding the anti-competitive effect of the market, given that this effect should be established on the market, it is clear that agreements that have no appreciable competitive antagonism on the market due to lack of anti-competitive effects are not forbidden, but for vertical agreements subject The anti-competitive nature of the European Union's judicial system is that it does not fundamentally prohibit agreements that do not have a tangible effect on the market (AG Case C234 / 89, 5CMLR 210).

(De Minimus Rule) This issue has made it increasingly difficult to ignore agreements of negligible importance; - there is no need to have a tangible effect on competition in the Treaty on the Functioning of the European Union, and this is a matter of judicial innovation. According to which an anti-competitive deal would be prohibited when it had a tangible impact on competition in the market. (The European Court of Justice has announced in its famous ballot: "If an agreement does not materially affect the market position of the relevant persons in the market, it is not subject to the prohibition of Article 85 (now 101)" (Rashvand, 2011).

Hence, less important agreements that do not have a tangible effect on competition in the market will not be subject to a ban. As for the tangible impact on the market, the European Commission has provided ideas over the years that, according to these views, if the market share of the parties does not exceed 10% of the market share, does not have a tangible effect on competition, as well The competition in the market is limited by the effect of the total agreement between the supplier and the producer. This percentage will decrease from 10% to 5% (Vakili and Hossein, 2010).

In the Iranian law regarding the tangible effect of the competition, Article 44 of the Law on the implementation of general policies of Article 44 of the Constitution provides: "Any collusion may be prohibited between persons who are pursuing one or more of the following in a contract, agreement or agreement (whether written, electronic, oral, or practical) in a manner that would interfere with competition."

Therefore, according to the explicit clause of the article, vertical agreements will only be subject to a prohibition, which will result in distortion of competition in the market; therefore, agreements that do not have a significant effect on competition in the market will not be subject to prohibition.

Conclusions

Vertical bans on Iran's competition law, in accordance with Article 44 of the General Implementation Policies of Article 44 of the Constitution, refers to any collusion between several persons not closely related to the consumer, and in the EU competition law and Article 101 of the Treaty of Functioning The EU consists of all agreements that exist between several non-overlapping firms.

The constituent elements of the forbidden vertical agreements may be agreed upon in three elements of agreement or decision or action, the existence of two or more independent business entities, and the vertical relationship between the parties. An agreement can be defined by the

co-ordination of the joint intention of a person to conduct a particular behavior. The point about the elements that make up vertical agreements is that agreement in this sense is due to the importance of the effects of the agreement and not their form in the contractual semantic competition law, and includes binding moral agreements.

The unilateral action decision is issued by trade and trade unions, a group of guilds or business enterprises. In the EU competition law, Article 101 of the Treaty on the Functioning of the European Union, unilateral decisions have been taken into account as a constructive element of vertical agreements, while this issue has not been identified in Iranian competition law.

Coordinated action means the practical understanding between business activists that, despite their coordinated action, is also considered in the competition law of Iran and the European Union, and aims to consider a form of cooperation between business activists without an agreement in the true sense The word is a vertical agreement so that competition in the market can be more easily guaranteed.

To realize the vertical agreement, it is also necessary that the agreement be made between two or more independent business entities. It is also necessary that the parties agree on the agreement vertically, meaning that the distance between the parties to the agreement with the consumer is different.

In order to ensure that the vertical agreement concluded is prohibited in competition law, regardless of its numerous instances in the rights of Iran and the European Union, it is necessary that the agreement has an issue or anticompetitive effect, and this will disproportionately interfere with the competition.

Having an anti-competitive object to ban an agreement means that the agreement itself has an anti-competitive effect in such a way that the parties intend to compete in the market. Also, in the case of anticompetitive effect, it should be noted that if an agreement is not anti-competitive in terms of subject matter, the implementation of the agreement would lead to anti-competitive effects, both potentially and overall, in such a case, the agreement is prohibited.

Lastly, it should be noted that the prohibition of vertical agreements requires that the agreement has a tangible effect on the foreclosure of competition in the market because, in accordance with the rule of non-respect of agreements of minor importance, the anti-competitive agreement is not prohibited in the event of no appreciable effect on the market. This issue Article 101 of the Treaty on the Functioning of the European Union and Article 44 of the Law on the Implementation of General Principles of Article 44 of the Constitution are considered.

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