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Expansion of Commercial Companies and the Requirements for Preserving a Competitive Market Structure: A Comparative Analysis of Concentration Control and Dominant Position in Iranian, U.S., and European Union Law

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ABSTRACT

Effective competition in commercial markets serves as a key driver of innovation, price reduction, and improvements in the quality of goods and services. However, in the course of their development and expansion, commercial companies often employ strategies such as mergers, acquisitions, and the abuse of a dominant position, which may disrupt the competitive structure of the market. Adopting an analytical-comparative approach, this study examines the requirements for preserving a competitive market structure in the context of the expansion of commercial companies across three legal systems: Iran, the United States, and the European Union. The findings indicate that, under U.S. law, the Sherman Act and the Clayton Act, with their emphasis on economic efficiency and consumer welfare, provide robust regulatory mechanisms and effective civil and criminal enforcement measures for controlling market concentration and market dominance. In the European Union, the structural approach based on Articles 101 and 102 of the Treaty on the Functioning of the European Union provides a coherent and supranational framework focused on competitive fairness and the preservation of market diversity. By contrast, despite the enactment of the Law on the Implementation of the General Policies of Article 44 of the Constitution and the establishment of the Competition Council, the Iranian legal system continues to face structural challenges, including weak enforcement mechanisms, a lack of institutional independence, and a shortage of specialized judicial precedents. Drawing on the successful experiences of the two more developed competition-law regimes, the present study proposes reform measures aimed at achieving an appropriate balance between corporate expansion and the preservation of effective competition in the Iranian market.

Keywords: *expansion, commercial companies, concentration control, dominant position, comparative competition law, antitrust enforcement measures*

Introduction

Free and effective competition, as one of the fundamental pillars of efficient economic systems, plays an indispensable role in enhancing efficiency, stimulating innovation, reducing prices, and ultimately increasing consumer welfare. However, in the course of developing and consolidating their position in competitive markets, commercial companies often employ strategies such as mergers and acquisitions in order to capture a larger share of the market and increase their economic power. Although such strategies may ostensibly lead to the expansion of economic activities and the realization of economies of scale, in the absence of effective supervision they can readily become instruments for creating or strengthening a dominant position and, consequently, disrupting the competitive order of the market. In other words, “development” and “competition” exist in a delicate tension that can be directed toward market equilibrium and coherence only through rules governing concentration control and the prohibition of abuse of a dominant position. The significance of this issue has manifested itself differently across legal systems, depending on their historical backgrounds, economic structures, and regulatory approaches. In the United States, as the birthplace of modern antitrust law, the Sherman Antitrust Act of 1890 and the Clayton Antitrust Act of 1914, with their emphasis on economic analysis and the centrality of “consumer welfare,” have established a rigorous yet flexible framework for controlling mergers and monopolistic conduct. In the European Union, a more structural approach grounded in competitive fairness is pursued through Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), the objective of which is not merely to prevent price increases but also to preserve the competitive structure of the market and guarantee equal opportunities for all economic actors (1).

By contrast, the Iranian legal system took an important step toward institutionalizing competition law through the enactment of the Law on the Implementation of the General Policies of Article 44 of the Constitution in 2008 and the establishment of the Competition Council. Nevertheless, comparative examination indicates that this system continues to face numerous structural and enforcement challenges. On the one hand, existing rules have often been formulated in general and formalistic terms and lack the flexibility required to assess the economic and competitive effects of conduct in dynamic markets, particularly technology- and innovation-driven markets. On the other hand, weak enforcement mechanisms, insufficient institutional independence, and the scarcity of specialized judicial precedent have limited the effectiveness of the Competition Council in controlling concentration and market dominance. Adopting an analytical-comparative approach, the present article seeks to explain the foundations and mechanisms of concentration control and the prohibition of abuse of a dominant position in the legal systems of Iran, the United States, and the European Union, while addressing the fundamental question of how the competitive structure of the market can be safeguarded while simultaneously supporting the development of commercial companies.

Theoretical and Legal Foundations of Corporate Development and Market Competition

Competition, as a driving force of innovation and efficiency in free markets, plays an indispensable role in the optimal allocation of resources and the enhancement of consumer welfare. In this context, the development and evolution of commercial companies, achieved through strategies such as mergers, acquisitions, and expansion of production lines, are recognized as major components of the dynamism of modern economies. Nevertheless, these two phenomena—effective competition and corporate development—may come into fundamental conflict, insofar as the growth and expansion of economic enterprises, particularly in the absence of appropriate regulatory frameworks, may lead to restrictions on competition and the creation of dominant positions. This challenge, which may be described as the “duality of development and competition,” requires effective legal frameworks that, while supporting corporate growth, prevent enterprises from deviating toward anticompetitive practices and prohibited concentrations. In response to this necessity, competition law has developed as a body of restrictive rules intended to moderate economic freedoms and preserve the integrity of commercial markets, allowing companies to benefit from the advantages associated with development while preventing the creation of abnormal monopolies and the abuse of market power. In today's business environment, however, increasing competition and constantly changing market conditions require businesses to devote greater attention to strategy and concept development. Strategy and concept development enables businesses to establish long-term objectives, obtain competitive advantage, and offer products and services that satisfy customer needs. Nevertheless, this process does not consist merely of a few simple stages; rather, it requires a comprehensive approach and meticulous planning.

Concept, Dimensions, and Strategies of Commercial Company Development

The development of commercial companies may be defined as a purposeful process aimed at increasing a company's capacity, scope of activity, productive capability, and market share through a combination of organizational, contractual, and economic strategies. Within this framework, corporate development is not limited merely to increasing the volume of existing activities; it may also be achieved through expansion of production lines, entry into new markets, mergers with other companies, or acquisitions of other enterprises. Corporate development strategies constitute commonly used mechanisms for the evolution of enterprises and improvement of conditions in commercial markets. Three important manifestations of such strategies are "acquisitions," "mergers," and "increase in production lines," while development may also be divided, according to its method of realization, into internal and external development (2). Internal development, in economic and managerial terms, refers to increasing a company's capacity through intra-organizational resources and facilities, including expansion of production lines, increased supply capacity, investment in technology, expansion of distribution networks, and entry into new fields of activity. The principal advantage of this method is that the company increases its economic capacity without directly absorbing or merging with a competing enterprise; accordingly, unlike mergers and acquisitions, it does not necessarily produce an immediate increase in market concentration. External development, by contrast, is generally realized through mergers or acquisitions, whereby a company combines with or acquires another enterprise in order to obtain capacity, market access, technology, resources, or new customers more rapidly. Mergers and acquisitions have therefore been identified as two principal methods of corporate takeover and have been examined as both permissible and prohibited forms of development in commercial markets (3).

From the perspective of competition law, the fundamental point is that corporate development is not inherently anticompetitive; rather, its legitimacy depends on its effects on the structure and process of competition. Accordingly, a merger or acquisition that increases efficiency, reduces costs, expands production, or generates innovation is not, in principle, inconsistent with the objectives of competition policy. However, where external corporate development results in excessive concentration of economic power, exclusion of competitors, creation or strengthening of a dominant position, and ultimately a reduction in effective competition, intervention by competition law becomes necessary (4). The importance of this distinction becomes particularly evident in relation to mergers and acquisitions, because these operations are among the most important mechanisms through which economic concentration is created. Where they result in monopoly power or a substantial reduction in competition, they may be challenged under competition law. In the United States, Section 7 of the Clayton Act subjects mergers that are likely substantially to lessen competition to regulatory control, while in the European Union, the merger-control regime enables ex ante assessment of the effects of significant mergers on the competitive structure of the market. In Iranian law, Articles 48 and 61 of the Law on the Implementation of the General Policies of Article 44 of the Constitution provide the basis for the Competition Council's jurisdiction over certain mergers. Corporate development must therefore be analyzed along a legal-economic continuum, at one end of which lies internal development and capacity expansion through resources within the company, and at the other end mergers, acquisitions, and increases in economic concentration. The decisive criterion in competition law is not development or corporate size per se, but rather the effect of the development strategy on market structure, market power, competitors' ability to enter the market, the level of competition, and ultimately consumer interests. Accordingly, an appropriate policy should permit companies to grow and increase efficiency while preventing the development process from becoming an instrument for creating monopoly power or eliminating competition.

Explanation of the Competitive Market Structure and Its Components: Effective Competition, Economic Efficiency, and Consumer Welfare

The competitive structure of a market consists of the conditions and factors that determine the extent and quality of competition among suppliers and the range of choice available to consumers. A desirable competitive market is one in which enterprises are able to compete for customers and expand their market shares without one or several firms possessing sufficient power to dominate the market process or eliminate or weaken competitors. The first component of a desirable competitive structure is effective competition. Effective competition is not limited merely to the presence of multiple firms in a market; rather, it requires that enterprises actually be subject to competitive pressure and that unjustified use of market power to impose unfavorable conditions on consumers or exclude competitors not be possible. From this perspective, free competition compels companies seeking to attract customers to improve quality, reduce prices, and enhance services. Free competition is one of the fundamental pillars of the market and contributes to quality improvement, stimulates innovation, and enables consumers to choose among different alternatives (5). The second component is economic efficiency. Competition requires companies to use their resources more effectively and to seek reductions in production costs and improvements in productivity. In a competitive market, an enterprise cannot operate solely on the basis of market power while disregarding costs and quality, because consumers may shift to competing suppliers. In explaining the relationship between competition and efficiency, competition encourages firms continually to improve their products and services and enhances economic efficiency through resource optimization. Competition also promotes more effective resource allocation and encourages firms to adopt new and more efficient methods in order to preserve their market share (1).

Optimal resource allocation likewise constitutes an important dimension of economic efficiency within a competitive market structure. In free markets, prices function as economic signals through the interaction of supply and demand and direct producers toward goods and services for which demand is greater. As a result, capital and other economic resources move from low-yield activities toward more productive activities. Competition promotes more efficient resource allocation and directs producers toward the production of higher-yield goods, thereby reducing costs and increasing consumer satisfaction. The third essential component is consumer welfare. Under competition policy, market performance must ultimately also be evaluated in terms of its effects on consumers, because lower prices, increased quality, greater variety, and expanded consumer choice are among the most important outcomes of effective competition. Competitive markets improve living conditions and general welfare by providing higher-quality goods and services at appropriate prices, while competition among sellers enables consumers to benefit from lower prices and better services (4). From this perspective, effective competition and economic efficiency are not separate processes; rather, competition creates the conditions for greater consumer welfare by placing pressure on firms to reduce costs, increase productivity, and innovate. Accordingly, a desirable competitive structure should be understood as one in which effective competition, economic efficiency, and consumer welfare interact with one another. The more genuine competition becomes, the stronger firms' incentives to improve quality, reduce costs, and innovate, and this process ultimately leads to better resource allocation and enhanced consumer welfare. Consequently, the purpose of competition law is not merely to increase the number of companies, but to create conditions in which market power cannot disrupt the competitive process.

Comparative Examination of the Concepts of "Economic Concentration," "Monopoly," and "Dominant Position" in the Three Legal Systems

In competition law, the concepts of economic concentration, monopoly, and dominant position, although interconnected, differ fundamentally in terms of their theoretical foundations, criteria of identification, and legal consequences across the legal systems of the United States, the European Union, and Iran. A precise understanding of these concepts constitutes the first step toward analyzing how anticompetitive structures are controlled and market efficiency is preserved (6). In the United States legal system, emphasis is placed on the concepts of "monopoly" and "attempt to monopolize," both rooted in Section 2 of the Sherman Act and characterized by a pragmatic approach grounded in economic efficiency. U.S. case law does not assess monopoly power solely on the basis of market share and generally requires a relatively high market-share threshold—often above 70 percent—to establish monopoly power. Even at this level, monopoly is not prohibited per se unless anticompetitive conduct is established. Unlike the European approach, which places greater emphasis on preserving the competitive structure of the market, the U.S. system focuses primarily on harm to consumer welfare and economic efficiency and displays greater flexibility in analyzing monopolistic conduct (7). In contrast, European Union competition law, developed within the framework of Article 102 TFEU, employs the concept of "dominant position" as its central analytical category. According to the case law of the Court of Justice of the European Union, a dominant position refers to a situation in which an undertaking is capable, to a significant extent, of acting independently of its competitors, customers, and consumers and thereby impairing effective competition. Article 102, unlike U.S. law, does not prohibit the mere possession of a dominant position but rather prohibits its abuse. Nevertheless, in practice, the European Commission adopts a more interventionist approach toward dominant undertakings through the use of lower market-share thresholds—often approximately 40 percent—and consideration of qualitative factors such as technical and commercial advantages over competitors. Some analyses indicate that EU competition law relies on factors extending beyond mere "bigness" and demonstrates less confidence in market self-correction, thereby adopting a more interventionist and "distrustful" stance toward large undertakings, whereas the U.S. system adopts a more neutral approach grounded in the "rule of reason" (8).

In Iran, the legal framework of competition is primarily based on the Law on the Implementation of the General Policies of Article 44 of the Constitution, enacted in 2008. Although the law addresses concepts such as "monopoly," "concentration," and "removal of barriers to competition," it suffers from structural ambiguity and significant deficiencies in defining these concepts precisely and transparently. Articles 45 and 48 generally prohibit anticompetitive conduct, including abuse of a dominant position, while Article 49 prohibits any merger or acquisition that results in "excessive concentration" or "disruption of competition." Nevertheless, the law lacks clear definitions of "excessive concentration" and "dominant position," and the practice of the Competition Council has not provided significant clarity in this respect. For example, the only published decision of the Council concerning the merger of two online discount companies, Takhfifan and NetBarg, merely referred to the "creation of unacceptable concentration in the market" and ordered their separation without providing detailed economic reasoning. This reflects a comparatively non-specialized approach lacking clear economic criteria when contrasted with the practice of competition authorities in the United States and Europe. These structural differences in the definition of foundational concepts are rooted in the theoretical foundations and overarching objectives of the three legal systems. In the United States, the ultimate purpose of competition law is the maximization of consumer welfare and economic efficiency. In Europe, in addition to efficiency, preservation of the "competitive structure of the market" as an intrinsic value and maintenance of common-market integration constitute central objectives. In Iran, by contrast, the law has focused largely on the formal dimensions of privatization and prevention of state monopoly and has neglected the formulation of detailed economic standards and quantitative indicators for identifying and controlling dominant positions and anticompetitive concentrations. This deficiency has limited the capacity of the Iranian legal system to address the challenges of the digital economy and the complexities of modern markets, whereas European and U.S. systems continue to adapt to economic developments by updating their rules and employing more dynamic indicators (9). Therefore, in order to facilitate the development of commercial companies in Iran while simultaneously preserving a competitive structure, it is necessary to remove existing legal ambiguities and adopt a balanced approach based on the "rule of reason" that not only prevents harmful concentrations but also permits the growth and efficient operation of large enterprises without creating excessive apprehension regarding restrictive enforcement, while drawing upon the experience of the advanced U.S. and European systems in developing clear and effective economic criteria.

Mechanisms for Supervising and Controlling Anticompetitive Mergers and Acquisitions

Mergers and acquisitions of commercial companies are, on the one hand, among the most important instruments for corporate development, expansion of production capacity, acquisition of technology, and entry into new markets; on the other hand, where they create or reinforce economic concentration, they may permanently impair the competitive structure of the market. Accordingly, contemporary competition law does not merely prohibit anticompetitive conduct after it has occurred, but also establishes ex ante concentration-control mechanisms designed to assess the likely effects of major commercial transactions before their completion and, where necessary, prevent their implementation. Despite differences in institutional structures and legal standards, this approach in all three legal systems under examination rests on a common foundation: protection of the competitive process and prevention of corporate development from resulting in exclusion of competitors, increased market power, or entrenchment of a dominant position. In the United States, this policy is implemented primarily through the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (10). In the European Union, concentration control is organized under the EU merger-control regime, with the European Commission playing the central role, while in Iran Chapter Nine of the Law on the Implementation of the General Policies of Article 44 of the Constitution places the Competition Council at the center of the system.

Merger Supervision in U.S. Law: The Role of the FTC, DOJ, and Judicial Practice

The U.S. merger-control system is based on Section 7 of the Clayton Act of 1914, which prohibits acquisitions of stock or assets where the effect "may be substantially to lessen competition, or to tend to create a monopoly" (11). Through enactment of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), the U.S. Congress established a premerger notification mechanism to provide the Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) with an opportunity to evaluate transactions before completion. These two institutions possess overlapping enforcement authority and generally allocate cases between themselves according to industrial specialization. In their assessment, the agencies use the Herfindahl-Hirschman Index (HHI) to measure market concentration. Within the framework of merger assessment and supervision, regulatory agencies generally employ the HHI as a quantitative measure of market concentration. Under the 2023 Merger Guidelines, where the combination of two economic enterprises causes the post-merger HHI to exceed 1,800 and simultaneously increases the index by more than 100 points, the merger is presumptively regarded, under the assumptions of the Guidelines, as anticompetitive and likely to produce adverse effects on competition. U.S. federal courts also perform an essential supervisory role through judicial precedent. For example, in the landmark case of *Brown Shoe Co. v. United States* (1962), the U.S. Supreme Court expressly emphasized that Section 7 of the Clayton Act should be interpreted and applied so as to arrest anticompetitive tendencies at their incipiency before they produce harmful consequences in the marketplace (11).

Legal Framework for Concentration Control in the European Union: Commission Powers and Assessment Criteria

The European Union merger-control regime is based on Council Regulation (EC) No. 139/2004, which confers upon the European Commission exclusive jurisdiction to assess concentrations having a “Community dimension” (12). The substantive assessment standard under this regime is the “Significant Impediment to Effective Competition” (SIEC) test, pursuant to which concentrations that would significantly impede effective competition in the internal market are regarded as incompatible with that market (12). This standard, introduced in 2004 in place of the former dominance test, enables intervention in cases where a merger significantly weakens competition even without creating or strengthening a dominant position (12). In its assessments, the Commission applies horizontal and non-horizontal merger guidelines. The 2004 Horizontal Merger Guidelines consider such factors as the parties’ market shares, closeness of competition, customers’ ability to switch suppliers, and elimination of an important competitive force or “maverick.” In judicial practice, the General Court of the European Union, in *CK Telecoms UK Investments Ltd v. Commission* (2020), sought to clarify the boundaries of the SIEC test and emphasized that the Commission was required to demonstrate that the merging parties were particularly close competitors and that the competitive force eliminated by the transaction was especially important (12). On appeal, however, the Court of Justice of the European Union adopted a more flexible approach to the legal standard applicable to such assessments (12).

Structure of Merger and Concentration Supervision in Iranian Law: The Role of the Competition Council and Enforcement Challenges

In Iranian law, the framework for merger control is principally provided in Chapter Nine of the Law on the Implementation of the General Policies of Article 44 of the Constitution, enacted in 2007, under the title “Facilitation of Competition and Prohibition of Monopoly,” encompassing Articles 43 to 84 (13). Article 48 prohibits mergers or acquisitions that result in “severe market concentration” or an “abnormal increase in the price of goods and services.” The Competition Council, as the supervisory authority, possesses jurisdiction over anticompetitive violations and may invalidate or dissolve unlawful mergers. The Executive Regulation on Merger and Acquisition Control, adopted in 2018, introduced the Herfindahl-Hirschman Index (HHI) for measuring severe market concentration (13). Nevertheless, Iran's merger-control regime is voluntary. Under Article 49, enterprises "may" seek a determination from the Competition Council before carrying out a merger, and there is no mandatory suspensory effect attached to premerger notification. This feature, together with the absence of a transparent system for economic assessment, constitutes one of the principal challenges of the Iranian regime. The merger of NetBarg and Takhfifan between 2020 and 2022 represents a prominent example of these difficulties. After more than two years of review, the Competition Council invalidated the merger in January 2023 without presenting transparent economic reasoning concerning the HHI or market shares (13). Furthermore, competition rules governing mergers and acquisitions have suffered from limited effectiveness because of the absence of sufficiently detailed implementing mechanisms. Accordingly, it may be concluded that, compared with the legal systems of the United States and the European Union, the Iranian system lacks mandatory premerger notification, transparent quantitative criteria, and an independent judicial review mechanism.

Comparative Analysis of the Prohibition and Control of Abuse of a Dominant Position

Within competition law, the prohibition and control of abuse of a dominant position constitutes one of the most sensitive and complex areas of regulatory intervention and has consistently generated extensive debate and divergent interpretations across different legal systems. What distinguishes this area from other branches of competition law is not merely the identification of large firms, but the determination of the narrow boundary between legitimate competitive conduct and anticompetitive practices capable of permanently impairing the competitive structure. On the one hand, the U.S. legal system, drawing on a pragmatic approach and the rule of reason, evaluates monopolistic conduct primarily in terms of harm to consumer welfare and economic efficiency and does not prohibit the mere possession of monopoly power in the absence of proven anticompetitive conduct. On the other hand, the European Union adopts a more structural approach based on competitive fairness and, through Article 102 TFEU, independently addresses abuse of a dominant position with an emphasis on preserving market diversity and equal opportunities for economic actors. In this context, the Iranian legal system, despite recognizing abuse of a dominant position in Article 45 of its competition legislation, continues to face significant deficiencies regarding a precise definition of dominance, transparent economic tests for assessing anticompetitive conduct, and independent specialized judicial review, thereby raising serious questions concerning the effectiveness of the system in practice. Comparative examination of these three legal systems demonstrates that differences in theoretical foundations, overarching objectives of competition policy, and institutional structures have produced distinct approaches to identifying abusive conduct and determining appropriate sanctions. Whereas U.S. case law, through landmark cases such as *Microsoft* and *Trinko*, has developed standards for distinguishing lawfully acquired monopoly power from anticompetitive conduct, the European Commission, through its 2009 Enforcement Priorities Guidance and major cases such as *Microsoft* and *Intel*, has developed and updated an analytical framework based on anticompetitive effects. By contrast, decisions of the Iranian Competition Council in the limited number of relevant cases have frequently lacked detailed economic market analysis, precise market definition, and scientifically grounded measurement of market power, and have tended to rely more on formalistic lists of prohibited conduct than on effective economic tests. These fundamental differences affect not only theoretical analysis but also the practical application and predictability of competition law for economic actors. Particularly in the age of the digital economy and the emergence of major technology platforms characterized by innovative business models and data-driven market power, the traditional boundaries of dominance have changed, increasing the need to revise the criteria for identifying abuse and strengthen regulatory mechanisms. A comparative analysis of the prohibition and control of abuse of dominance in these three legal systems therefore not only clarifies their respective strengths and weaknesses but also provides an appropriate foundation for proposing reforms to Iranian law.

Forms and Criteria for Identifying Abuse of Dominant Position in U.S. Law

In U.S. competition law, the concept corresponding to "abuse of a dominant position" is principally analyzed through monopolization and the acquisition or maintenance of monopoly power by exclusionary conduct under Section 2 of the Sherman Act. Accordingly, the mere possession by an enterprise of monopoly power or a very high market share does not in itself constitute a violation of competition law. Rather, it must be established that the enterprise acquired or maintained such power through means other than competition on the merits or used exclusionary and unjustified conduct to preserve or expand it (11). The Federal Trade Commission likewise recognizes that a company may achieve monopoly status because of a superior product, superior management, or even historical circumstances; what competition law prohibits is the acquisition or maintenance of monopoly power by unreasonable and anticompetitive means (11). The first criterion under this system is proof of monopoly power in the relevant market. Courts initially define the relevant product and geographic markets and then assess the firm's power on the basis of market share, barriers to entry, product substitutability, and the firm's sustained ability to raise prices or exclude competitors. Market share therefore constitutes only one indicator rather than an exclusively quantitative rule, and assessment of actual market power requires examination of the market's structure and economic conditions (11). Once monopoly power has been established, the second element—exclusionary conduct—is examined. Such conduct may take the form of predatory pricing, exclusive dealing, exclusivity requirements, discrimination or restrictions on competitors' access, tying of products and services, abuse of control over an essential input, or anticompetitive refusal to deal. The decisive criterion is whether the conduct goes beyond ordinary competition on the merits and is capable of maintaining or strengthening monopoly power (11). In *United States v. Microsoft Corp.* (2001), the U.S. Court of Appeals for the District of Columbia Circuit held that Microsoft had engaged in monopolistic conduct by restricting competitors' access to application programming interfaces (APIs) and entering into restrictive arrangements with personal-computer original equipment manufacturers (OEMs), thereby preserving its monopoly position in the market for PC operating systems (11). In *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP* (2004), the U.S. Supreme Court drew an important distinction between monopoly lawfully obtained through a superior product and unlawful monopolistic conduct, emphasizing that antitrust law is concerned with protection of the competitive process rather than competitors as such (11). In the field of pricing, the test for "predatory pricing" was articulated in *Brooke Group Ltd. v. Brown & Williamson Tobacco Co.* (1993), under which the plaintiff must demonstrate both pricing below an appropriate measure of cost and a dangerous probability that the defendant will subsequently recoup the losses through higher prices after competitors have been excluded (11).

The European Union Approach to Controlling Abuse of Market Power

In the European Union legal system, Article 102 of the Treaty on the Functioning of the European Union prohibits any abuse of a dominant position within the internal market or a substantial part of it insofar as such conduct may affect trade between Member States (14). In its 2009 Guidance on enforcement priorities concerning exclusionary abuses, the European Commission articulated an "effects-based approach" under which establishing dominance and identifying the challenged conduct are not necessarily sufficient; rather, the conduct must be capable of restricting effective competition (7). *Microsoft v. Commission* (T-201/04) constituted a landmark in the interpretation of Article 102. In its judgment of September 17, 2007, the General Court upheld the finding that Microsoft's refusal to provide competitors with interoperability information in the work-group server operating systems market, as well as its tying of Windows Media Player to the Windows operating system, constituted abuse of a dominant position (12). The Court indicated that although undertakings are generally free to select their trading partners, under exceptional circumstances a dominant firm's refusal to supply may constitute an abuse, particularly where the requested information is indispensable for competitors to remain viable in the market. In the Google Shopping case of 2017, the European Commission fined Google €2.4 billion for favoring its own comparison-shopping service in search results and discriminating against competing comparison-shopping services; the decision was subsequently upheld by the General Court in 2021 (12). In *Intel v. Commission*, the Court of Justice of the European Union emphasized in 2017 that, where the Commission has undertaken an analysis of the capacity of loyalty rebates to foreclose an as-efficient competitor, it must properly examine the relevant economic evidence and cannot rely solely on formal assumptions concerning the conduct's restrictive capacity (12).

Comparative Examination of Abuse of Dominant Position in Iranian Law and the Practice of the Competition Council

In Iranian law, Article 45 of the competition rules prohibits "abuse of a dominant position" and enumerates conduct such as creating barriers to entry for other enterprises, imposing abnormal prices, applying unfair contractual conditions, and restricting production or distribution (15). Nevertheless, Iranian law lacks a precise definition of "dominant position" in the competition-law sense and does not clearly delineate the boundary between legitimate competitive conduct and abuse. The Iranian legal system relies primarily on a formal and rule-based approach and lacks an effects-based economic test of the type observed in the European Union and, to some extent, the United States (7). In practice, the Iranian Competition Council has adjudicated a limited number of cases in this area, and its decisions have often been based on sector-specific complaints without detailed economic analysis of market definition and market power. Unlike the U.S. system, which focuses on identifying exclusionary conduct, and the European Union, which increasingly emphasizes anticompetitive effects, decisions of the Iranian Competition Council often lack economic reasoning concerning "consumer harm" or "economic efficiency." The Law on the Implementation of the General Policies of Article 44 of the Constitution, enacted in 2007, addresses severe market concentration in Articles 48 and 49 but does not establish a clear link between concentration and abuse of dominance, while the Competition Council's authority to impose deterrent sanctions is more limited than that of the Antitrust Division of the U.S. Department of Justice, the Federal Trade Commission, or the European Commission. Consequently, the principal challenges facing the Iranian legal system include the absence of fully independent specialized judicial review of Competition Council decisions, insufficient participation of specialized economists in adjudicatory bodies, and a lack of transparency in standards used to evaluate the conduct of dominant enterprises, all of which reduce legal predictability for economic actors.

Legal Challenges and Solutions for Balancing Development and Competition

Achieving a balance between the development of commercial companies and preservation of the competitive structure of the market has consistently constituted a fundamental challenge for competition-law systems and, in the contemporary era, has acquired new and increasingly complex dimensions as a result of phenomena such as the digital economy, data monopolization, and market globalization. On the one hand, corporate development through strategies such as mergers, acquisitions, and expansion of production lines serves as a driving force for innovation, economic efficiency, and enhanced consumer welfare, and legal systems necessarily must protect this legitimate process. On the other hand, in the absence of effective supervision, these same strategies may create or strengthen dominant positions, eliminate competitors, and ultimately disrupt the competitive order of the market, thereby rendering competition-law intervention unavoidable. This duality confronts each legal system with numerous structural, institutional, and enforcement challenges, and the manner in which those challenges are addressed determines the overall effectiveness of competition policy. In this respect, despite positive developments such as enactment of the Law on the Implementation of the General Policies of Article 44 of the Constitution and establishment of the Competition Council, the Iranian legal system continues to face serious structural deficiencies, including imprecise definitions of key concepts such as severe concentration and dominant position, the absence of specialized judicial precedent, and insufficient institutional independence, all of which hinder effective enforcement of competition law. By contrast, the experience of advanced systems such as the United States and the European Union demonstrates that successfully achieving the required balance demands a proportionate approach grounded in reasonableness, capable of identifying and preventing harmful concentrations and abusive practices while simultaneously allowing large enterprises to grow efficiently without creating excessive fear of restrictive intervention. Moreover, emerging challenges such as the proliferation of digital platforms, accumulation of big data as a source of market power, and cross-border integration of economies require competition-law systems to update traditional criteria for identifying dominance and devise more dynamic regulatory mechanisms. Consequently, a detailed diagnosis of the Iranian legal system's weaknesses in controlling concentration and market dominance, together with the use of successful comparative models to formulate reforms, constitutes not only an academic necessity but also an urgent requirement for improving the business environment and increasing legal predictability for economic actors. This section therefore draws upon the experience of the two advanced systems to explain emerging challenges confronting competition law, including the impact of digital markets on traditional concepts of dominance; critically examines structural and enforcement deficiencies in the Iranian legal system; and ultimately presents comparative reform proposals aimed at strengthening the competitive structure of the Iranian market and balancing corporate development with effective competition.

Emerging Challenges Facing Competition Law: Digital Markets, Data Monopoly, and Globalization

The digital economy has substantially loosened the traditional relationship between market power, price, and market share. In platform markets, factors such as network effects, economies of scale, low marginal costs of reproducing digital services, closed ecosystems, data-driven self-reinforcement, and high switching costs may enable an enterprise to acquire considerable economic power without directly increasing prices (16). The European Union's Digital Markets Act reflects precisely these characteristics and, in identifying "gatekeepers," considers not only size and user numbers but also network effects, data-driven advantages, and economies of scale and scope (15). In this environment, data have assumed fundamental importance as a competitive input. An undertaking possessing vast volumes of user data, transactional information, or behavioral data can use such information to improve algorithms, personalize services, target advertising, and increase the attractiveness of its platform. The result may be a self-reinforcing cycle in which more users generate more data, more data improve service quality, and greater quality attracts still more users. Analysis of digital competition has increasingly recognized that data accumulation itself may become a source of competitive advantage and that, in certain transactions, access to or exclusion from data may determine competitors' ability to compete effectively (15). The issue is further complicated by the fact that traditional competition law frequently relies on indicators such as price, market share, and competitor exit to identify market power, whereas digital services may be provided to end users at zero monetary price and competition may instead occur through quality, privacy, innovation, speed, data portability, and even user-interface design. Exclusive reliance on traditional tests may therefore underestimate market power. Modern merger analysis of multi-sided platforms similarly recognizes that specific characteristics of such markets may intensify or accelerate competitive concerns and that the relationships among different sides of a platform must therefore be taken into account (10). Globalization adds another dimension to this challenge. Major digital and multinational companies may simultaneously operate across numerous jurisdictions, while a single transaction or practice may generate cross-border competitive effects. Consequently, coordination among competition authorities and convergence of legal standards have become increasingly important. Within the European Union, this objective is pursued through supranational regulation, cooperation between the European Commission and national competition authorities, and coordinated enforcement mechanisms. From this perspective, the principal challenge facing competition law is that technological and economic growth of large corporations should not automatically be equated with market power; at the same time, where network effects, data accumulation, and control of infrastructure permanently eliminate opportunities for competitors to enter or expand, purely ex post intervention may come too late. The European experience with ex ante regulation of major digital platforms indicates that, in certain sectors, preventive instruments operating alongside traditional competition rules may provide a more effective response to these transformations (15).

Structural and Enforcement Diagnosis of the Iranian Competition-Law System in Controlling Concentration and Market Dominance

In Iranian law, a normative framework for concentration control exists, and Articles 47 to 49 of the Law on the Implementation of the General Policies of Article 44 place acquisitions and anticompetitive mergers under the supervision of the Competition Council. Article 48 prohibits a merger where it leads to conduct referred to in Article 45, an abnormal increase in prices, severe concentration, or creation of a controlling enterprise, while its provisions authorize the Competition Council to determine the scope of severe concentration. Article 49 further provides that enterprises may seek a determination from the Council as to whether Articles 47 and 48 apply. Accordingly, unlike the stricter ex ante models used in the United States and the European Union, the Iranian system in its basic form does not contain a strong requirement of "mandatory notification and transaction suspension." This feature has long been identified as one of the weaknesses of the Iranian system. Hosseini observes that the legislature's use of the term "may" in Article 49 resulted in the emergence of a voluntary merger-control regime and that reform toward a mandatory system would be more effective. The same analysis also notes that incorporating competition provisions within the Law on the Implementation of the General Policies of Article 44 differs from jurisdictions in which competition law is organized through independent legislation, potentially creating difficulties in terms of stability and comprehensiveness of the legal framework (13). Another significant challenge is the gap between the existence of legal rules and the predictability of their enforcement. More recent research on Iranian competition law similarly emphasizes that certain provisions, despite being broadly consistent with the principles of economic efficiency and competitive fairness, require more precise interpretation or legislative reform to produce coherent practical outcomes. In this context, the merger of the two major online discount businesses, Takhfifan and NetBarg, is particularly significant. From an institutional perspective, the independence and enforcement capacity of the Competition Council are likewise of fundamental importance. Hosseini distinguishes the Council’s formal independence from its practical independence and identifies factors such as membership composition and financial resources as relevant to any assessment of genuine institutional autonomy (13). Furthermore, limited access to specialized economic tools, market data, econometric analysis, and electronic evidence may restrict the authority’s ability to deal effectively with large enterprises. This problem assumes even greater importance in complex and digital markets, where relevant-market definition and measurement of market power are particularly difficult. From a comparative perspective, the principal weakness of the Iranian system cannot be reduced merely to the absence of statutory provisions; the deeper problem is the incomplete development of the entire competition-policy cycle, ranging from precise market definition, notification and suspension procedures, data collection and analysis, reasoned decision-making, and selection of proportionate remedies to effective judicial supervision. By contrast, European experience emphasizes institutional independence, adequate human and financial resources, investigative powers, and effective enforcement mechanisms as essential components of an operational competition regime (5). Therefore, if Iranian competition law is confined merely to announcing statutory prohibitions without developing economic and enforcement capacity, concentration and market dominance will continue to be controlled with delay and uncertainty. Diagnosis of the Iranian system demonstrates that reform must move from “mere legislation” toward “competition governance”—a governance framework in which decision-making criteria are clear, the Competition Council’s role is precisely defined, information-gathering capabilities are strengthened, and the consequences of regulatory decisions become predictable. Such a development constitutes a fundamental requirement for balancing corporate development and competition.

Conclusion

The present article adopted a comparative approach to examine the relationship between the development of commercial companies and the requirements for preserving the competitive structure of the market across the legal systems of Iran, the United States, and the European Union. The findings demonstrate that “development” and “competition” are not inherently or fundamentally contradictory. Rather, within an effective competition policy, they can function as complementary pillars of economic growth and increased public welfare. What distinguishes legitimate development from harmful market concentration is not the mere expansion or increased size of enterprises, but the manner in which such growth occurs and its effects on market structure and consumer interests. From this perspective, competition law, as an interdisciplinary field situated at the intersection of law and economics, must be capable of employing transparent economic criteria to distinguish legitimate growth from prohibited monopolization.

The comparative analysis demonstrated that the U.S. legal system, relying on a pragmatic approach and the rule of reason, principally seeks to prevent conduct that harms consumers and economic efficiency. Under this system, possession of monopoly power is not prohibited per se; rather, intervention is directed toward the abuse or unlawful maintenance of such power through anticompetitive conduct. By contrast, the European Union adopts a more structural approach grounded in competitive fairness and, in addition to economic efficiency, attaches importance to preserving market diversity and equal opportunities for economic actors. By relying on ex ante instruments, including mandatory merger notification and the Significant Impediment to Effective Competition test, the European system has developed a more integrated supervisory framework. Although these two models differ in their theoretical foundations, both have in practice developed mechanisms aimed at balancing corporate growth with preservation of competition.

By contrast, despite positive developments such as enactment of the Law on the Implementation of the General Policies of Article 44 of the Constitution and establishment of the Competition Council, the Iranian legal system continues to face serious structural and enforcement deficiencies. Among the most important challenges are the lack of precise definitions of key concepts such as "severe concentration" and "dominant position," the absence of mandatory premerger notification, the lack of specialized and independent judicial mechanisms for reviewing Competition Council decisions, and insufficient reliance on detailed economic analysis in the decision-making process. These deficiencies not only call into question the effectiveness of competition rules but also reduce predictability for economic actors and create conditions in which opaque and potentially inconsistent enforcement practices may arise. The merger involving the two online discount companies illustrates these difficulties, as the Competition Council ordered separation without presenting sufficiently rigorous economic reasoning.

Furthermore, emerging challenges such as the proliferation of digital platforms, accumulation of big data as a new source of market power, low reproduction costs of digital services, network effects, and globalization of markets have compelled competition-law systems to reconsider traditional standards. In this environment, reliance solely on indicators such as market share and price is insufficient for identifying monopoly power, and qualitative factors such as access to data, interoperability, network effects, and platform-switching costs must also be considered. The European Union's experience with the Digital Markets Act demonstrates that, in certain sectors, ex ante regulatory instruments operating alongside traditional competition rules may provide more effective responses to contemporary developments.

Ultimately, reform of Iranian competition law must move from "mere legislation" toward "competition governance." Achieving this objective requires a series of measures, foremost among them redefining fundamental concepts on the basis of transparent economic criteria, making premerger notification mandatory and introducing a transaction-suspension mechanism, strengthening the independence and specialized capacity of the Competition Council through recruitment of qualified economists and market analysts, and establishing independent judicial procedures for reviewing Council decisions. Furthermore, the adoption of transparent guidelines concerning relevant-market definition, measurement of market power, and economic assessment of mergers could enhance predictability while also safeguarding enterprises' legitimate right of defense. In the age of the digital economy, updating competition rules and adapting them to global developments is no longer optional but an unavoidable necessity if Iran is to protect the legitimate development of commercial companies while safeguarding the competitive structure of the market against excessive concentrations and abusive conduct and moving toward sustainable economic development.

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Authors' Contributions

All authors equally contributed to this study.

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