



MECHANISMS OF ORGANIZING BANKING COMPETITION IN IRAQI AND COMPARATIVE LAW

Teacher Doctor.

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Article history:	Abstract:
<p>Received: 20th August 2024 Accepted: 11th September 2024</p>	<p>Maintaining a proper competitive path requires the need to provide legal means and mechanisms that ensure this achievement, as the regulation of banking competition will not be limited to the need to follow the legal rules for its regulation, but that these mechanisms may find rooted even for the laws regulating banking and from reviewing the legal texts related to the regulation of competition, we find that legislators have adopted several mechanisms to achieve this, and where the purpose of these mechanisms that enable to meet the requirements of the aspirations of liberalization of banking services, which is the regulation of competition between banking institutions, and that these mechanisms include banking merger, the organization of the licensing authority, and the strengthening of the role of the Competition Affairs Council, in addition to that the regulation of these means came in light of the response to the legislative requirements required by the provisions of international agreements issued by the World Trade Organization, especially the General Agreement on the Liberalization of Trade in Services and its annexes (especially Annex I - Financial Services Annex) and from Continuing the research, we find that all the mechanisms and legal rules contained in the banking laws had absorbed the totality of the provisions contained in that agreement.</p>

Keywords: banking merger, competition council, monopoly, economic concentration.

INTRODUCTION

The quest to meet the requirements of liberalization of banking services must be by preparing the national competitive market towards the entry of transnational banks, as this is one of the most important outputs of the banking liberalization policy, which requires the need to reduce the negative effects resulting from practices and agreements affecting the regulation of competition, and this can only be done by adopting the legal mechanisms included in the laws regulating banking, including the pursuit of effective banking integration and the organization of the licensing authority, as well as strengthening the role of the Competition affairs, as employing the effects of these mechanisms by legal data and according to sound foundations inevitably results in what serves the aspirations of regulating competition and making it proceed according to sound foundations in light of the intensification of competition from foreign banks.

The importance of research

The importance of researching the mechanisms of regulating banking competition is highlighted through the practical benefits that result from that regulation, as the modest level of the banking sector in developing countries compared to international banks makes it necessary to upgrade the banking system and raise its efficiency by working to organize the most important aspects related to the work of the banking sector, with which we can prepare human cadres and technical requirements necessary to prepare for global competition.

The research problem

The research problem is related to the importance of showing the readiness of the banking system for global competition. Can the legal rules governing competition contained in different legal systems upgrade the banking system towards global openness, especially in light of the fierce competition in the global financial market? What is the readiness of the legislative system to meet the requirements of regulating banking competition in light of the provisions of international conventions and laws issued as a result?

Research Methodology:

In this study, we will rely on the comparative analytical approach, as the most important legal mechanisms necessary to regulate banking competition are searched for through the analysis of the relevant legal texts contained in the laws regulating banking operations in general and the laws regulating competition in particular, especially the Iraqi

Competition Law No. 14 of 2010, the UAE Competition Regulation Law No. 4 of 2012 and the Egyptian Competition Protection and Prevention of Monopolistic Practices Law No. 30 of 2005.

Research Plan

This research is divided into three sections, where the first section is devoted to discussing banking merger as one of the legal mechanisms adopted in the organization of banking competition, especially in terms of its concept and statement of its provisions and its role in that regulation, as well as discussing the organization of the authorities of the Central Bank in granting the necessary licenses to practice banking activities, and this is what will be in the second section. In contrast, the third section will look for the most important means and mechanisms adopted in promoting and strengthening the role of the Competition Affairs Council.

THE FIRST TOPIC Banking Merger

As long meeting the requirements of liberalization of banking services starts with creating a competitive market with the need to get rid of the negative effects resulting from agreements and practices that affect the regulation of competition between banks supplying their services, but we must look at the issue from another side, as some forms of economic concentration are very useful if their employment has been carried out by sound legal data ([1]).

Therefore, a banking merger must be seen as an imperative necessity to meet the requirements of banking liberalization, although it is one of the agreements affecting the regulation of competition, it is very important if it is adopted as a mechanism to classify the efficiency of the performance of the banking system and increase its competitive position.

Also, although banking merger has multiple effects, whether related to merged banks[2]), contracts concluded by those banks or related to the rights of creditors or shareholders[3], it can negatively affect the provision of banking liberalization requirements, we can take this into account if we adopt a gradual stage of banking merger to avoid its harmful effects and to be consistent with the principle of gradual liberalization that it came with. General Liberalization of Services Convention[4]).

Each country wishing to liberalize the services of its banks seeks to study the effects of the merger on the countries that preceded it in an attempt to benefit from its experiences and provide the possibility of laying the foundations for employing those effects, as banking merger provides the preparation of feasibility studies for markets in various regions and a feasibility study on the quality of services with a strong and balanced return, which makes the bank able to face the existing competition and strengthen its position in the local and external market and increase its activity in the least time and less cost than Achieves the speed of geographical spread([5]).

Banking integration also helps to benefit from the new means of providing banking services, especially increasing the ability to invest in the field of banking and financial technology in order to achieve diversity and inclusion in banking services, as well as the development of mechanisms for the supply of banking services, especially electronic banks, and the development of electronic systems approved in their supply.

This is what helps a lot in the expansion of banking operations resulting from the liberalization policy in the global business environment and the merger also helps to fade traditional banking operations, as it always stimulates the banking administration to think about the development of new banking operations that suit the reality in which banking liberalization policies are practised, such as operations that are carried out by selling, buying, managing and establishing companies (such as brokerage companies, underwriting management, clearing, and direct investment in Arab banks) as well as other operations such as retail banking, consumer credit, and other operations. Processes have a major role in the development of the private sector, especially in light of the backward aspects of direct investment and the development of societies ([6]).

If the financial and administrative system is the vessel in which banking operations are conducted, any violation of that system may threaten the banking institution with collapse and bankruptcy, including the search for alternative systems to preserve the banking entity from collapse requires taking advantage of the banking merger system and the effects it generates as an alternative to keeping the troubled bank away from the competitive market, and thus banking merger is a serious attempt to ensure the safety and stability of the banking system as a whole ([7]).

From a financial point of view, the merger helps to restructure the finances to promote the merged entities and draw the right path for them, as what has been activated scientifically and thoughtfully, as the main purpose of the merger is not to increase large capital, so it will help to increase the capital of the merging bank, but the goal lies in the optimal method of employing capital, as real competition does not depend on the abundance of funds in banks only, but is very affected by the method of their investment ([8]).

From an administrative point of view, the comprehensive change in the thinking based on the management of the bank in a manner that suits the aspirations and requirements of liberalization of banking services, calls for the need to restructure the administrative elements to form an administrative apparatus with a high degree of efficiency and experience in banking entities required by the international banking environment, as well as its effects on the need to prepare the human element to meet the requirements of meeting the technical and technological progress necessary for the policy of banking liberalization. From that, mergers are one of the most essential influences in providing the possibility of creating a rational competitive environment by paying attention to the regulatory and legal departments in the banking system ([10]).

On the other hand, the growing intensity of global competition is very necessary in the orientation of banks towards the need to develop their activities, as banking services are no longer limited to traditional local, international and other activities, but include investment services, and thus banking activity exceeded the traditional thought of providing

services and tended to work towards expanding the areas to which their activities extend, as banks switched from financial mediation to commercial mediation (comprehensive banks), and this was one of the most prominent outputs of banking integration, represented by the removal of restrictions imposed. To limit the possibility of expansion and inclusion in banking systems[11].

THE SECOND TOPIC Regulation of the licensing authority

The licensing authority works to provide sufficient knowledge of the geographical coverage of banking institutions in the relevant market, under which the banking system moves towards regulating competition by studying the potential and future effects resulting from the presence of foreign banking institutions in the local market ([12]).

Consumer protection is also one of the vital issues in the competitive market, which necessitated the need for the existence of a legal framework regulating the authority to grant the necessary licenses for the work of banking institutions in their host countries and to liberalize their services in light of the technological convergence that contributed greatly to the development of banking services, which stresses the need for the necessary control over the work of banks, whether electronically or traditionally ([13]).

Subsequently, the authority to grant the necessary licenses for the operation of foreign banking institutions has become a necessary necessity for the liberalization of banking services and the fulfilment of its requirements, particularly in terms of the regulation of competition, as legislation now regulates those powers using legal texts that it has included by the regulation of the provisions of banking activity under special laws, as is the case with the instructions for the registration of branches and offices of commercial representation of foreign companies in Iraq for the year 2004.

The legal texts that guarantee the powers of the license holder may discourage the legal mechanisms necessary to obtain it, starting from the submission of the license application ([14]), up to its acceptance or rejection and the multiple conditions that intersperse, including those related to the administrative, organizational and financial aspect of the institution requesting the license, in addition to that these texts limited the possibility of studying the license application and the validity of approval and rejection to the Central Bank exclusively, as it represents a completely independent body, as well as a financial system that includes all the axes of the device. Banker in the country([15]).

From the observation of the legal texts on the regulation of licenses, we find that comparative legislation has prepared a number of conditions and controls by which the competent authority for granting licenses has restricted the need to ensure their availability at the entity requesting the license, and these controls and conditions may relate to the need for the availability of technical and organizational skills necessary for the work of banks, issues related to the personal aspects of the human capabilities used by the banking department in the conduct of its business ([16]), the amount of capital employed in the implementation of banking activities, the seriousness of the banking administration towards the possibility of liberalizing services on a global scale, the bank's technological capacity, as well as the need to consider the public economic interest as the first consideration in the extent to which the license can be granted or not[17]), as reflected in the previous data in the content of the provision of Article (64) of the Central Bank of Egypt Law.

To obtain accurate regulation of issues related to the granting of licenses to practice banking activity, most legal systems have given full authority to set the necessary restrictions to regulate this issue to the Central Bank, as we find that the UAE legislator in the UAE Central Bank Law No. 14 of 2018 has given the authority to the Board of Directors of the Central Bank to set the restrictions and controls necessary to obtain a license in Article (70) thereof, as it stipulates (1- The Board of Directors shall impose conditions or restrictions on the license by practising licensed financial activities or changing or cancelling the conditions or restrictions imposed on the license)[18].

Article 4 of the Central Bank Act No. 56 of 2004 (**Tasks**) stipulates that (i) issuing licenses and permits to banks and organizing and supervising their work as stipulated in this law and in the Banking Act.

Where these legal rules have an effective impact on tightening the authority to grant the necessary licenses to enter foreign institutions, as the modernization of these rules according to the new circumstances in societies requires a review of the existence of some institutions, especially considering the effects generated by practising their activity, as these effects may be achieved positively from the practices of banking activity, but at one time it becomes negatively affecting the competitive environment of the host country ([19]) Thus, the Convention has shed light on this issue by stipulating in Article 28/m that a legal person of another member means "a legal person who: 1. Formed or organized under the laws of that other member, and which carries out significant commercial operations in the territory of that member or any other member.

For example, domestic laws remain concerned with the need to regulate the licensing authority, which varies and is complicated according to adaptation to the current competitive environment of the host country[20]), in accordance with the rules and principles of the General Agreement for the Liberalization of Trade in Services, which requires the need to deal with banking service suppliers in accordance with the principle of reciprocity.

Article (4/5) of the Iraqi Banking Law, as it stipulates (5- Subsidiaries and branches of banks that are partially or wholly owned by persons convicted under the laws of Iraq shall be treated in a manner not less than the annual one that local banks deal with unless this law provides otherwise) ([21]).

The Central Bank, which is the competent authority to approve the license application, also can withdraw, suspend or cancel it according to its conviction, which is complemented by the extent to which banking institutions meet the legal conditions necessary to continue their activities. [22].

From the above, it seems to us that the regulation of licenses for the operation of foreign banking institutions is of optimal importance, which appears in three aspects:

First, the regulation of licensing helps to know the geographical coverage of banking institutions in the concerned country, which helps to distribute them correctly to ensure the integrity and flow of competition bases.

The second aspect - the regulation of licenses for the work of banking institutions works to develop banking services and the development of new ones in light of keeping pace with technological developments, especially in financial services, and enhancing the efficiency and capabilities of national banks by benefiting from the trade of foreign banks.

Third, licenses are closely related to the requirements for the liberalization of banking services, as they allow the legal and regulatory restrictions imposed on foreign banks and impede their global access, as well as their compatibility with the principles of the Agreement on the Liberalization of Trade in Services, the most important of which are national treatment and the principle of increasing the participation of developing countries in the membership of the World Trade Organization ([23]).

THE THIRD TOPIC **Strengthening the role of the Competition Council**

The legal situation affecting the regulation of competition entails serious risks not only to the economic system, but also to the political and social systems, and therefore banking institutions, to maintain their competitive positions in the market, have followed various means to this end, which prompted legislation towards the need to create the necessary administrative bodies to regulate competition in the market, and thus various legislations approved the adoption of the Competition Affairs Council ([24]).

Since freedom of competition is not the end of the legislation regulating competition, as the goal lies in the extent to which it can be regulated and its negative effects reduced, the planning provided by the legal rules concerned with it may not meet the ambition of controlling it[25], as much as the Competition Council as the body already competent to regulate competition. The prohibition of monopolistic practices, including the prohibition of unfair competition may not come from the law, but can arise from the prevailing values in societies as a component of protecting the public economic order. [26].

The regulation of competition by the Competition Council can only be achieved through the size of the powers provided with it and the accuracy of the legal effects resulting from them, as these powers are what show banking institutions the limits that must be respected so as not to prejudice the rules of competition in the market, and this is evidenced in particular by the advisory and regulatory powers exercised by the Council ([27]).

About discussing this power, the mere provision of an opinion on a particular issue may not meet the purpose of the establishment of the Competition Council, which is supposed to be one of its most important powers the possibility of taking the necessary decisions if it discovers the violation that affects the flow of competition between institutions, as the mere expression of an opinion or the submission of a budget preparation report ... etc.[28]) may not be commensurate to enact competition laws[29]).

Even the legal nature of the Competition Council remains governed by the administrative scope without the possibility of activating the legal texts necessary to regulate competition, and thus the existence of the Competition Council becomes practically useless, as it is irrelevant without the powers to take decisive decisions on reducing the effects of agreements and practices affecting the regulation or prevention of competition or forcing banking institutions to modify the content of operations that may affect the regulation of competition, and this is done only through decision-making. Required for the default of anti-competitive enterprises[30].

While we said that agreements arising from economic concentration are permissible within certain limits and percentages, as it should be the powers of the Council to decide whether to approve them or not, so the Central Bank becomes the competent authority with the necessary licenses for that, but the studies and reports prepared by the Council on the prevailing conditions in the competitive market are no less, and the decisions issued on them may be very tight as they are based on scientific and practical studies from which the Council aims to control the market ([31]). The role of the Competition Council is strengthened not only by granting it the power to make decisions on matters related to the regulation of competition but the Council also remains with the origin of its competence outlined in the law, including advisory powers due to its importance even for the legislative authority, especially when preparing or amending competition laws ([32]).

CONCLUSION

We calculated from this research the sincerity of the attempt and the pursuit of information, and at the end of this research we had reached the most important results and proposals as follows:

RESULTS

A banking merger is one of the most important legal requirements necessary to meet the requirements of liberalization of banking services, as well as one of the most important legal mechanisms necessary to regulate banking competition, with which we can raise the efficiency of the performance of the banking system as well as enhance the competitive position of the banking institution within the scope of competition with foreign banks. The regulation of the authority to grant the necessary licenses to practice conventional and non-conventional banking activities is a matter that goes hand in hand with controlling the presence of foreign banks in the local competitive market, and this can only be done by studying the current and future effects resulting from this, and this is also done by tightening the legal rules on

matters related to licenses to practice banking activity. The presence of administrative bodies within the banking institution system is inseparable from regulating its competition and enhancing its competitive strength. Accordingly, the Competition Affairs Council is one of the most prominent administrative organizations within the banking institution, as well as one of the legal mechanisms necessary to regulate banking competition, and this is done through the legal powers granted under the laws regulating banking work. The legal provisions necessary to regulate competition were not limited to the level of banking laws only, not even at the level of laws regulating competition, but international conventions had a prominent role in this regard, as we find that the legal texts have absorbed the rules contained in international conventions.

RECOMMENDATIONS

Based on the possibility of achieving the requirements for Iraq's accession to the membership of the World Trade Organization and the accompanying need to comply with the provisions of the agreements issued by it, especially the General Agreement for the Liberalization of Trade in Services and its annexes, in particular (Annex I - Financial Services Annex) and the accompanying need to track the necessary legislative changes following the application of the provisions and principles of those agreements, we call on the Iraqi legislator to follow up the successive legislative development following the global legislative change and the concomitant need to find and organize mechanisms. Legal to achieve this.

We will not be able to summarize the recommendations by simply listing the proposals that the Iraqi legislator calls for their adoption, since the existence of comprehensive legislation to regulate matters related to the banking sector, especially the regulation of banking competition, is very, very imperative, especially since we have learned that banking operations are always in constant renewal and change, let alone about issues related to the competition of national banking institutions to those of foreign countries and the latter's very advanced human and technical administrative capabilities.

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