

## Competition and State Aid

### 1. Competition Rules Applicable to Undertakings

#### Introduction

The Armenian legislation in the field of rules on the performance of undertakings is mainly incompliant with the EU legislation, however there is full compliance in regard to issues related to the abuse of dominant position, the requirement of mandatory declaration of concentrations, submission of information to the State Commission for Protection of Economic Competition of Armenia and information storage.

In the field of rules on the performance of undertakings, the EU legislation defines the main principles of competition between undertakings, regulates issues related to concentrations and proposes appropriate mechanisms for the control of anti-competitive agreements. The above-mentioned issues in Armenia are regulated by the Civil Code of Armenia (Chapters 5 and 62<sup>1</sup>), Civil Procedure Code of Armenia (Chapter 8<sup>2</sup>), the RoA laws on Protection of Economic Competition<sup>3</sup>, on Joint-Stock Companies<sup>4</sup>, as well as by the following prudential legal acts adopted by the State Commission for Protection of Economic Competition (hereinafter the Commission): decisions on Determination of Commodity Markets Borders and Size<sup>5</sup>, on Approval of the Procedure for Determining Economic Entity's Dominant Position on the Commodity Market<sup>6</sup>, on Determination of Unjustified (Artificial) Price of Sales and Purchase<sup>7</sup> and on Determination of Anti-competitive Agreements<sup>8</sup>.

Based on the screening results it should be noted that the discrepancies existing in Armenia in the field of rules on the performance of undertakings are mainly due to the fact that the RoA Law on Protection of Economic Competition does not thoroughly reflect the most important issues, which are regulated in the EU by separate regulations. In particular, there is no separate legal act (law) on regulation of concentrations in Armenia, which shall clearly regulate issues relating to concentrations<sup>9</sup>. There is no separate legal act related to the enforcement of legislation on concentrations<sup>10</sup>. Types of anti-competitive agreements and related issues are not clearly defined<sup>11</sup>. There are no separate legal acts on certain types of agreements among economic entities<sup>12</sup>. The lack of the right of inspection narrows the scope of the authorities of the Commission.

<sup>1</sup> HO-239, 05.05.1998

<sup>2</sup> HO -247, 17.06.1998

<sup>3</sup> HO -112, 06.11.2000

<sup>4</sup> HO -232, 25.09.2001

<sup>5</sup> No- 24, 04.03.2002

<sup>6</sup> No-27, 04.03.2002

<sup>7</sup> 62- N, 09.07.2003

<sup>8</sup> 122-N, 01.09.2004

<sup>9</sup> Council Regulation (EC) No. 139/2004. of 20 January 2004 on the control of concentrations between undertakings.

<sup>10</sup> Council Regulation (EC) No. 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

<sup>11</sup> Council Regulation No. 19/65/EEC of 2 March 1965 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices

Council Regulation (EEC) No. 2821/71 of 20 December 1971 on application of Article 85 (3) of the Treaty to categories of agreements, decisions and concerted practices

Commission Regulation (EEC) No. 2790 of 22 December 1999 on application of the Article 81(3) of the Treaty to categories of vertical agreements decisions and concerted practices.

<sup>12</sup> Commission Regulation (EEC) No. 1400 of 31 July 2002 on application of the Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector.

Council Regulation (EEC) No. 1534/91 of 31 May 1991 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector.

Commission Regulation (EC) No. 2659/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of research and development agreements

Commission Regulation (EC) No. 358 of February 272003 on the application of Article 81(3) to certain categories of agreements, decisions and concerted practices in the insurance sector.

Within the framework of the Programme, the subchapter “Competitive rules on undertakings” is scheduled to be completely approximated with the requirements of the EU legislation in the course of 2006-2008.

**Y2007**

For efficient regulation of concentrations, a new law regulating this field shall be adopted in Armenia. It will be drafted on the basis of the EC Regulation No. 139 of 20 January 2004 which specifies issues concerning the state regulation of concentrations in the EU. For the enforcement of the newly adopted legal act, the Commission shall elaborate a draft decision, the provisions of which shall be in line with the basic principles of the EC Regulation No. 802 of 7 April 2004.

Highlighting the role of the protection of economic competition in further development of the economy of Armenia, it is envisaged to make amendments to the RoA Law on Protection of Economic Competition in line with the provisions of the EC Regulation of 16 December 2003 which defines the basic principles of the protection of competition applied in the EU.

**Y2008**

In an effort to control the anti-competitive agreements among economic entities and regulate vertical agreements, a new law shall be drafted in line with EC Regulations No. 19 of 2 March 1965 and No. 2821 of 20 December 1971.

For efficient enforcement of the aforesaid legal acts, the Commission shall be delegated with the power of inspection.

**Y2009**

Agreements concluded among economic entities in various branches of economy and in different fields of activities shall be regulated by the decisions adopted by the Commission. This decision will particularly refer to research and developments, specialization and agreements to be concluded among economic entities in the insurance sector. The mentioned decisions shall be drafted in accordance with EC Regulations No. 2659 of 29 November 2000, No. 2658 of 29 November 2000, No. 1534 of 31 May 1991 and No. 358 of 27 February 2003.

**1.1. Legislative Approximation**

0	1	2	3	4	5	6
N/N	Measure	EU Legal Source	Responsible Institutions	Submission Date	Necessary resources (man/ days)	EU Technical Assistance
<b>2007</b>						
1.	Elaboration of a draft law on Control of Concentrations between Undertakings	Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings	Ministry of Trade and Economic Development (with participation of the State Commission for Protection of Economic Competition of Armenia)	1 <sup>st</sup> quarter	63	Consultancy, provisional expertise
2.	Elaboration of a draft on making amendments to the RoA Law on Protection of Economic Competition	Council Regulation (EC) of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty	Ministry of Trade and Economic Development (with participation of the State Commission for Protection of Economic Competition of Armenia)	2 <sup>nd</sup> quarter	54	Provisional expertise
3.	Elaboration of a draft decision of SCPEC on Application of the provisions of the RoA Law on Control of Concentrations between Undertakings	Commission Regulation (EC) No. 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of	State Commission for Protection of Economic Competition of Armenia	2 <sup>nd</sup> quarter	42	Provisional expertise

		concentrations between undertakings				
<b>TOTAL</b>					<b>159</b>	
<b>2008</b>						
4.	Elaboration of a draft law on agreements and concerted practices between undertakings	Regulation No. 19/65/EEC of the Council of 2 March 1965 on application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices  Regulation (EEC) No. 2821/71 of the Council of 20 December 1971 on application of Article 85 (3) of the Treaty to categories of agreements, decisions and concerted practices	Ministry of Trade and Economic Development of Armenia (with participation of the State Commission for Protection of Economic Competition of Armenia)	1 <sup>st</sup> quarter	15	Consultancy, provisional expertise
5.	Elaboration of a draft decision of SCPEC on certain categories of vertical agreements between undertakings.	Commission Regulation (EEC) No. 2790 of 22 December 1999 on application of the Article 81(3) of the Treaty to categories of vertical agreements decisions and concerted practices	State Commission for Protection of Economic Competition of Armenia	2 <sup>nd</sup> quarter	15	Provisional expertise
<b>TOTAL</b>					<b>30</b>	

2009						
6.	Elaboration of a draft decision of SCPEC on certain categories of research and development agreements, decisions and concerted practices	Commission Regulation (EC) No. 2659/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of research and development agreements	State Commission for Protection of Economic Competition of Armenia (Ministry of Education and Science of Armenia)	1 <sup>st</sup> quarter	18	Consultancy, provisional expertise
7.	Elaboration of a draft decision of SCPEC on certain categories of specialisation agreements, decisions and concerted practices	Commission Regulation (EC) No. 2658/2000 of 29 November 2000 on the application of Article 81(3) of the Treaty to categories of specialisation agreements	State Commission for Protection of Economic Competition of Armenia (with participation of the Ministry of Trade and Economic Development of Armenia)	1 <sup>st</sup> quarter	15	Consultancy, provisional expertise

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8.	Elaboration of a draft decision of SCPEC on certain categories of agreements, decisions and concerted practices in insurance sector	<p>Council Regulation (EEC) No. 1534/91 of 31 May 1991 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector</p> <p>Commission Regulation (EC) No. 358 of February 272003 on the application of Article 81(3) to certain categories of agreements, decisions and concerted practices in the insurance sector</p>	State Commission for Protection of Economic Competition of Armenia (with participation of the Ministry of Finance and Economy of Armenia)	1 <sup>st</sup> quarter	27	Consultancy, provisional expertise
<b>TOTAL</b>					<b>60</b>	
					<b>249</b>	

**1.2 .Institutional capacities<sup>13</sup>**

0	1	2	3	4
NN	Institution	Reorganization	Training Needs	Technical Assistance Needs
1.	State Commission for Protection of Economic Competition of Armenia RoA Ministry of Trade and Economic Development	-	Training courses on EU legislation regulating the protection of economic competition (2 days/ 2007)	Consultancy, provisional expertise
2.	State Commission for the Protection of Economic Competition of Armenia RoA Ministry of Trade and Economic Development	-	Training courses on regulation of concentrations in the EU (5 days/2007)	Consultancy, provisional expertise
3.	RoA Economic Court	-	Training courses on theoretical basis of economic competition (3 days/2007)	Consultancy, provisional expertise
4.	State Commission for Protection of Economic Competition of Armenia	Establishment of a monitoring subdivision	Training courses on inspections for disclosing violation cases of competition legislation in the EU (5 days/2007)	Consultancy, provisional expertise
5.	State Commission for Protection of Economic Competition of Armenia RoA Ministry of Trade and Economic Development		Training courses on regulation of agreements and concerted practices in the EU (3 days/ 2008)	Consultancy, provisional expertise

<sup>13</sup> For coordination of legislative approximation activities, relevant EU Integration subdivisions will be established within the responsible ministries and state agencies mentioned in the present subchapter

## **2. Competition Rules Applicable to Specific Sectors**

### **Introduction**

The Armenian legislation on the rules applicable to separate sectors is almost fully incompliant with the EU legislation, except for measures provided by the jurisdiction of the Commission,

The EU legislation in the field of competition rules applicable to specific sectors defines the basic principles for protection of competition in various sectors of economy. In Armenia the subject matter is partially regulated by the RoA laws on Protection of Economic Competition<sup>14</sup> and on Anti-dumping and Countervailing measures<sup>15</sup>.

Based on the screening results it should be noted that the discrepancies existing between the Armenian legislation governing this field and the relevant EU legislation are mainly due to the fact that within the context of this subchapter there is almost a full gap in the Armenian legislation on the above-mentioned sectors, whereas the EU regulates the competition “rules” applicable to separate sectors<sup>16</sup>.

Within the framework of the Programme, the subchapter “Competition Rules Applicable to Specific Sectors” is to be completely approximated with the requirements of the EU legislation in the course of 2006-2008.

### **Y2007**

For definition of competition rules applicable to transport by rail, road and inland waterway, the Commission shall elaborate a new draft decision based on the principles of the EC Regulation No. 1017 of July 29 1968.

For regulation of competition in the production of and trade in agricultural products, the Commission shall elaborate a relevant draft decision, the main provision of which shall be in line with the provisions of the Regulation (EC) No. 26 of 1965.

### **Y2009**

To regulate the concerted practices in air transport sector, the Government of Armenia shall submit a new draft decree which shall, in general, comply with the provisions of Regulations (EC) No. 3976 of 14 December 1987 and No. 1617 of 25 June 1993.

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<sup>14</sup> HO-112, 06.11.2000

<sup>15</sup> HO-385, 19.06.2002

<sup>16</sup> Council Regulation (EEC) No. 3976/87 of 14 December 1987 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector  
Commission Regulation (EEC) No. 1617/93 of 25 June 1993

on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports

Regulation No. 26/ applying certain rules of competition to production of and trade in agricultural products

Council Regulation (EEC) No. 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway



**2.1. Legislative Approximation**

0	1	2	3	4	5	6
NN	Measure	EU Legal Source	Responsible Institutions	Submission Date	Necessary Recourses (man/days)	EU Technical Assistance
<b>2007</b>						
1.	Elaboration of a draft decision of SCPEC on competition rules to transport by rail, road and inland waterway	Council Regulation (EEC) No. 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway	State Commission for Protection of Economic Competition of Armenia (with participation of the Ministry of Transport and communication of Armenia)	4 <sup>th</sup> quarter	15	Provisional expertise
2.	Elaboration of a draft decision of SCPEC on competition rules to the production of and trade in agricultural products	Regulation No. 26 establishing certain rules of competition to production of and trade in agricultural products	State Commission for Protection of Economic Competition of Armenia (with participation of the Ministry of Agriculture of Armenia)	4 <sup>th</sup> quarter	15	Provisional expertise
<b>TOTAL</b>					<b>30</b>	
<b>2009</b>						
3.	Elaboration of a draft Government Decree on certain categories of agreements and	Council Regulation (EEC) No. 3976/87 of 14 December on the	Ministry of Transport and Communication of	2 <sup>nd</sup> quarter	15	Provisional expertise

	concerted practices in the air transport sector	<p>Application of Article 85(3) of the Treaty to Certain Categories of Agreements and Concerted Practices in the Air Transport Sector.</p> <p>Commission Regulation (EEC) No. 1617/93 of 25 June 1993 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports</p>	Armenia (with participation of the General Department of Civil Aviation of Armenia, State Commission for Protection of Economic Competition of Armenia)			
<b>TOTAL</b>					<b>15</b>	
					<b>45</b>	

**2.2. Institutional Capacities<sup>17</sup>**

0	1	2	3	4
NN	Institution	Reorganization	Training	Technical Assistance Needs
1.	RoA Ministry of Transport and Communication RoA Ministry of Agriculture State Commission for the Protection of Economic Competition of Armenia RoA Ministry of Trade and Economic Development	-	Training courses on the EU experience in the elaboration and application of competition rules to various branches of economy (2007)	Consultancy, provisional expertise, training
2.	RoA Ministry of Transport and Communication General Department of Civil Aviation of Armenia State Commission for the Protection of Economic Competition of Armenia RoA Ministry of Trade and Economic Development of Armenia	-	Training courses on agreements and concerted practices in air transport sector in the EU (2009)	Consultancy, provisional expertise, training

<sup>17</sup> For coordination of legislative approximation activities, relevant EU Integration subdivisions will be established within the responsible ministries and state agencies mentioned in the present subchapter

### 3. State Aid

#### **Introduction**

The legislation of Armenia does not envisage a legal act related to state aid from the economic competition perspective. All legal acts in Armenia do not consider state aid in the context of competition. The main difference is due to the fact that in the EU 'state aid' means aid to undertakings, whereas in Armenia it refers mainly to natural persons. The state aid to small and medium-sized enterprises may be considered as an exception, however it is not viewed in the context of competition either. Taking into account the aforementioned, the prudential and agency legal acts of Armenia, which, although indirectly (in the context of competition), but do relate to state aid, are listed below.

The EU legislation in the field of state aid regulates aid granted to undertakings by the State in the context of the protection of equal competitive conditions in the economy. The legal acts related to state aid in Armenia are as follows: the RoA laws on Transport<sup>18</sup>, on State Aid to Small and Medium-sized Enterprises<sup>19</sup>, on Employment of Population<sup>20</sup>, on Social Protection of the Disabled in Armenia<sup>21</sup>, on Budgetary System<sup>22</sup>, on Accounting<sup>23</sup>, on Non-profit Organizations<sup>24</sup> and other legal acts.

Within the framework of the Programme, the subchapter "State Aid" shall be approximated with the requirements of the EU legislation by 2009.

#### **Y2006**

With the purpose of making state aid more transparent, the RoA laws on Budgetary System and on Non-profit Organizations shall be amended and brought in line with the provisions of Directive (EC) No. 723 of 25 June 1980.

#### **Y2007**

For regulation of state aid to undertakings in Armenia, a new law shall be adopted, which will be elaborated in accordance with Regulation (EC) No. 659 of 22 March 1999. The Commission shall elaborate new draft decisions aimed at ensuring the application of the mentioned law. The provisions of mentioned decisions shall be mainly based on the principles of Regulations (EC) No. 794 of 21 April 1999, No. 994 of 7 May 1998 and No. 69 of 12 January 2001.

Given the importance of SME development in Armenia, the Government shall propose a new draft law, which will regulate the state aid in that field. The law shall be elaborated on the basis of the Regulation (EC) No. 70 of 12 January 2001.

#### **Y2008**

A new law shall be elaborated to regulate state aid in the field of education (training) and employment, which will be based on the principles of Regulations No. 68 of 2001 and No. 2204 of 12 December 2002.

#### **Y2009**

For regulation of state aid in transport by rail, road and inland waterway sectors, a new draft law shall be elaborated based on the Regulation No. 1107 of 4 June 1970.

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<sup>18</sup> HO-201, 03.02.1998

<sup>19</sup> HO -121, 05.12.2000

<sup>20</sup> HO -93, 03.12.1996

<sup>21</sup> HO -57, 24.05.1993

<sup>22</sup> HO -137, 24.06.1997

<sup>23</sup> HO -515, 26.12.2002

<sup>24</sup> HO -248, 23.10.2001

**3.1. Legislative Approximation**

0	1	2	3	4	5	6
N/N	Measure	EU Legal Source	Responsible Institutions	Submission Date	Necessary resources (man/ days)	EU Technical Assistance
<b>2006</b>						
1.	<ul style="list-style-type: none"> <li>Elaboration of a draft law on making amendments to the RoA Law on the Budgetary System</li> <li>Elaboration of a draft law on making amendments to the RoA Law on Non-profit Organizations</li> </ul>	Commission Directive No. 723 of 25 June 1980 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings	Ministry of Finance and Economy of Armenia (with participation of the Ministry of Justice of Armenia, the State Commission for Protection of Economic Competition of Armenia)	4 <sup>th</sup> quarter	15	Provisional expertise
<b>TOTAL</b>					<b>15</b>	
<b>2007</b>						
2.	Elaboration of a draft law on state aid control for the protection of economic competition	Council Regulation No. 659 of 22 March 1999 on rules for the application of Article 93 of the EC Treaty	Ministry of Trade and Economic Development of Armenia (jointly with the State Commission for Protection of	3 <sup>rd</sup> quarter	18	Consultancy, provisional expertise

			Economic Competition of Armenia and the Ministry of Finance and Economy of Armenia)			
3.	Elaboration of a draft law on state aid to small and medium-sized enterprises	Commission Regulation (EC) No. 70 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises	Ministry of Trade and Economic Development of Armenia (jointly with the State Commission for Protection of Economic Competition of Armenia and the Ministry of Finance and Economy of Armenia)	4 <sup>th</sup> quarter	18	Provisional expertise

4.	Elaboration of a draft decision of SCPEC on the application of the provisions of the RoA Law on state aid control for the protection of economic competition	<p>Commission Regulation (EC) No. 794/2004 of 21 April 2004 implementing Council Regulation (EC) No. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty</p> <p>Council Regulation (EC) No. 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid</p> <p>Commission</p>	State Commission for Protection of Economic Competition of Armenia	4 <sup>th</sup> quarter	66	Provisional expertise
<b>TOTAL</b>					<b>102</b>	

2008							
5.	Elaboration of a draft law on State Aid for education/training, employment sectors	Commission Regulation (EC) No. 68 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid  Commission Regulation (EC) No. 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment	Ministry of Labour and Social Affairs of Armenia (with participation of the State Commission for Protection of Economic Competition of Armenia, Ministry of Education and Science, Ministry of Trade and Economic Development of Armenia, Ministry of Finance and Economy of Armenia)	1 <sup>st</sup> quarter	30	Consultancy, expertise	provisional
TOTAL					30		
2009							
6.	Elaboration of a draft law on granting of aids for transport by rail, road and inland waterway	Regulation (EEC) No. 1107 of 4 June 1970 on granting of aids for transport by rail, road and inland waterway	Ministry of Transport and communication (with participation of the State Commission for	1 <sup>st</sup> quarter	15	Consultancy, expertise	provisional



			Protection of Economic Competition of Armenia and the Ministry of Finance and Economy of Armenia)			
TOTAL					15	

**3.2. Institutional capacities<sup>25</sup>**

0	1	2	3	4
NN	Institution	Reorganization	Training Needs	Technical Assistance Needs
1.	State Commission for Protection of Economic Competition of Armenia RoA Ministry of Trade and Economic Development RoA Ministry of Finance and Economy RoA Ministry of Labour and Social Affairs RoA Ministry of Education and Science	-	Training course on the principles of state aid in the EU (4 days/2007 and 3days/2008)	Consultancy, provisional expertise, training

<sup>25</sup> For coordination of legislative approximation activities, relevant EU Integration subdivisions will be established within the responsible ministries and state agencies mentioned in the present subchapter