

**STATE COMMISSION FOR THE PROTECTION OF ECONOMIC COMPETITION OF
THE REPUBLIC OF ARMENIA**

23 April 2008

No. 39-N

DECISION

**ON OFFICIAL CLARIFICATION ON SUBMISSION OF DECLARATION OF
CONCENTRATION**

In the public session held on 23 April 2008 the State Commission for the Protection of Economic Competition of the Republic of Armenia (hereinafter referred to as “the Commission”) discussed, based on the Application No PM/2008-03 of 15 April 2008 (hereinafter referred to as “the Application”) of the “Corporate Governance Centre” Fund (hereinafter referred to as “the Fund”), the issue on official clarification on the effect of the Procedure for declaration of concentration of economic operators (hereinafter referred to as “the Procedure”) approved by the Decision of the Commission No 01-N of 21 January 2008 “On the procedure for declaration of concentration of economic operators and the declaration form” (hereinafter also referred to as “the Decision”) on transactions concluded by economic operators prior to its entry into force.

In its application, the Fund requested the Commission to officially clarify whether, at the moment of submitting the Application, the Decision shall apply to share acquisition transactions concluded prior to its entry into force if the actual acquisition of 20 percent and more of shares of an economic operator by another economic operator took place after the entry into force of the Decision. Does the actual acquisition of shares after the entry into force of the Decision, pursuant to share acquisition transactions concluded prior to entry into force of the Decision, imply that the Decision shall also apply to that legal relation?

Examining the Application, the Commission stipulates that according to point 5 of the Procedure (the Decision entered into force on 25 February 2008) and in cases provided for in Article 9(1) of the Law of the Republic of Armenia on the Protection of Economic Competition (hereinafter referred to as “the Law”), prior to giving effect to the concentration or participation therein, parties to concentration should submit to the Commission a declaration which shall include the form of concentration and the information on each party envisaged by Article 9(2) of the Law. According to point 3 of the Procedure, concentration envisaged by Article 8(b) of the Law shall be deemed to have been given effect upon concluding an assets or share acquisition transaction, and, in cases envisaged by Law, upon state registration of rights arising thereby. The legislation does not provide for state registration of a share acquisition transaction in the case referred to in the Application. Thus, economic operators must submit a declaration of concentration prior to giving effect to the concentration, i.e. before concluding assets or share acquisition transactions irrespective of the fact that the rights and obligations of

the parties will rise in the future (conditional transaction) when a Commission decision stipulating the procedure on concentration declaration and the declaration form exist.

Based on the aforementioned and having regard to Article 87(2)(c) of the Law of the Republic of Armenia on Legal Acts and Article 19(1)(h)(i) of the Law, the Commission ***has decided to:***

1. Officially clarify that the Procedure for declaration of concentration of economic operators approved by the Decision of the Commission No 01-N of 21 January 2008 “On the procedure for declaration of concentration of economic operators and the declaration form” shall not apply to transactions concluded prior to its entry into force.

2. This decision shall enter into force on the tenth day following its official publication.

Chairperson

A. Shahnazaryan