



## Armenia\*

– Michael W Nicholson<sup>†</sup> and Lilit V Melikyan<sup>††</sup>

Armenia<sup>1</sup> is a small, landlocked country located in the South Caucasus, with a 2,500-year cultural history. The first nation to formally adopt Christianity (in the early part of the fourth century), Armenia has enjoyed periods of autonomy, despite having come under the sway of the Roman, Byzantine, Arab, Persian, and Ottoman Empires.

The country is bordered by Eastern Turkey, Azerbaijan, the Azerbaijan-Naxcivan enclave, Georgia and Iran. Its capital city being Yerevan, Armenia is divided into 11 administrative regions. Incorporated into Russia, the country was then made a part of the Union of Soviet Socialist Republic (USSR) in 1928. As a result, in 2002 the majority (93 percent) of the population is Armenian, Russians make up two percent and Azeris and other ethnic groups constitute the remaining five percent, although the Azeri population is minimal.

### Economy

Armenia has achieved strong economic growth rates in the past decade, including growth of over 10 percent per annum, between 2001 and 2003. Even so, Armenia continuously suffered from a series of troubles, in the 15 years prior to that. In 1988, a massive earthquake levelled the second-largest city in the republic.

After the collapse of the Soviet Union, Armenia became embroiled in a war with its neighbour, Azerbaijan, which left the official economy, in 1994, shrunk to only 33 percent of the size it had been five years earlier. Although a ceasefire was declared in 1994, both Azerbaijan and Turkey keep a closed border with Armenia, which, combined with the natural trade barriers of mountains and land locked status, dramatically limits its access to international markets.

Armenia is a member of the WTO and maintains very low tariffs, but in many ways resembles a closed economy. The vestiges of concentrated sectors, from central planning,

PROFILE	
Population:	3.1 million***
GDP (Current US\$):	2.8 billion***
Per Capita Income: (Current US\$)	950 (Atlas method)*** 3,120 (at PPP.)***
Surface Area:	29.8 thousand sq. km
Life Expectancy:	72.3 years**
Literacy (%):	99.4** (of ages 15 and above)
HDI Rank:	82***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

are not yet subject to competitive pressures and, thus, the need for an effective competition policy is very strong.

### Competition Evolution

The Republic of Armenia (RA) passed the Law on Protection of Economic Competition (LPEC) in December 2000. This marked the start of the implementation of economic competition policy in Armenia, by the State Commission for the Protection of Economic Competition (SCPEC).

Armenia is a relative latecomer to the wave of antitrust policy adoption, compared with other former centrally planned economies of Eastern Europe and, in particular, its neighbouring countries in South Caucasus. Armenia's steps in this direction were taken after almost ten years of market-oriented reforms. Both the competition authority and the enforcement mechanism for antitrust in the country are, therefore, less developed than that of transition economies during the mid-90's. Armenia, however, has made significant progress towards creating an efficient competition institution.

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<sup>1</sup> <http://www.cia.gov/cia/publications/factbook/geos/am.html>

## Competition Regulation and Authority

The LPEC is the primary legal basis for the SCPEC, in its establishment and also for its competencies. This law is largely modelled after Articles 81 and 82 of the Treaty of Rome, which provides the legal foundation for competition policy in the EU.

The influence for this particular model is mainly attributed to the Partnership and Cooperation Agreement (PCA) between the EU and the Republic of Armenia, Articles 43(1) and 43(2), according to which the legislation of Armenia should be harmonised with EU legislation. This specifically includes competition regulation.

The Constitution of Armenia also provides a legal basis for competition policy, in particular Article 8, stipulating “...the state guarantees free development of all types of property in the country and equal legal protection, freedom of economic activities and free economic competition”.

In addition, Article 12 of the Civil Code of the Republic of Armenia contains provisions on the application of civil rights, connected with forbidden activities aimed at limiting competition and the abuse of dominant position.

## Institutional Structure

The institutional structure of the SCPEC closely resembles that of competition authorities in EU countries. The SCPEC is a state agency, a part of the executive branch of the state, but independent from the Central Government.

Seven Commissioners (including a Chairperson and Deputy Chairperson) are appointed by the President, on the nomination of the Prime Minister. All Commission members serve five-year terms. Three of the original seven Commissioners have been reappointed to continue their terms, and there has been one change in the Chairmanship.

The current organisational structure of the SCPEC is comprised of three major departments:

- *Legal*  
The legal department has the general responsibilities to provide legal advice, offer legal representation, and produce legal documents, on behalf of the Competition Commission.
- *Methodology and Analysis (M&A)*  
The M&A department takes responsibility for undertaking the analyses of particular markets, within the SCPEC mandate, following an accepted methodology.
- *Research and Enforcement (R&E)*  
The R&E department is primarily responsible for gathering information and conducting analyses on particular violations of the Law.

The SCPEC qualifies as a budgetary institution, a so-called ‘pure’ public service entity, because it does not have the right to engage in income-generating activities. The SCPEC is funded exclusively by the state budget. Annually, its budget claims get discussed and approved by the National Assembly, as part of the draft state budget.

The SCPEC provides an annual report and an annual work plan, to the National Assembly, for discussion and approval. As an internal planning tool, the SCPEC develops an annual activity plan, listing specific projects and setting timeframes for their proper implementation.

## Competencies and Anticompetitive Business Practices

The main tasks of SCPEC include investigations of the infringements of the LPEC, decision-making in individual cases of competition law enforcement, general sector investigations, and competition advocacy. Like most other competition agencies, SCPEC deals with merger control (economic concentration cases), abuse of dominant position, anticompetitive agreements (cartels), and unfair competition (consumer protection).

In international competition policy circles, a hotly debated issue revolves around the question on whether competition agencies or sector-specific regulatory bodies should handle competition issues in regulated sectors, like energy, water, telecommunications, and financial markets. The Armenian LPEC grants this authority to the SCPEC, but would require both clearer explanations of regulatory policy, regarding financial markets, and closer cooperation with sectoral regulators.

The SCPEC does not hold clear jurisdiction over a number of tasks that are traditionally committed to competition agencies, including the regulation of the advertising market, consumer protection, state aid oversight, and public procurement control. We discuss each of these below.

## Advertising Regulation

There is no regulator for the advertising sector in Armenia, and regulatory tasks are spread over many agencies, which causes confusion and results in an unsatisfactory outcome. The SCPEC, based on articles 11-15 of the LPEC, has a responsibility to get involved when there is a case of advertising that may result in consumers’ confusion or misinformation. The SCPEC is seeking to consolidate this process.

## State Aid Control

Due to its effects on the competitive environment, all the countries of the EU, without exception, have adopted legislation regulating state aid. Armenia, currently, has not yet addressed the issue of state aid in legislation. There is not even a definition of ‘state aid’ in any of the laws, including the LPEC.

As with consumer protection, recommendations have also been made to accelerate the progress on state aid monitoring, including for the authority of state aid regulation to be granted to the SCPEC.

### **Public Procurement Control**

The SCPEC is currently not in charge of public procurement control, though there are suggestions that it should take over this function as well. With the public procurement systems still at a developing stage, it is likely that abuses may arise, in single-sourcing for example, or in more complicated situations at local government level. Supervision by an agency like the SPECT, which is dedicated to maintaining competitiveness, seems the safest approach for the state to take.

### **Sectoral Regulation**

#### **The Energy Sector**

Armenia, prior to the passage of the Energy Law, had a single owner/operator of all the energy sector entities. Competition in the energy sector was non-existent and there was no regulation of energy services. This facilitated corruption at all levels of the organisations within this sector. In addition, there was no transparency in pricing and consumer policies.

The Energy Law of Armenia governs the activities of the energy sector. The Energy Regulatory Commission (ERC) is the authorised regulatory body for the implementation of the Law. The energy sector has strong natural monopoly characteristics.

The ERC activities include: licensing; monitoring; tariff setting; modelling power contracts; implementing ensuring adherence to Wholesale Market Rules and Grid Code, rules of retail energy service providers (electricity, natural gas, thermal); and resolving customer complaints.

The fundamental objectives of energy sector regulation are to:

- provide economic efficiency, where competition is unable to provide it, in the cases where there is a monopoly, and competition is neither possible nor feasible;
- balance the interest between customers and investors (fair, just and equitable doctrine);
- attract investment by providing guaranteed, allowed return on investment in high risk situations;
- sustain the energy services; and
- ensure transparency in the regulatory process.

Since energy is the engine for economic growth, in the absence of competition, the ERC's role is crucial. Therefore, its independence from the political sphere is highly important, in order to prevent:

- politicisation of the energy sector;
- influence of special interest groups; and
- mounting increase of the country debt due to sector losses.

### **Consumer Protection**

The protection of consumers against deceptive and fraudulent behaviour by sellers has obvious links to competition policy, and many countries have seen advantages in combining these two branches of market regulation into one authority.

On the other hand, consumer protection may also have a focus on product safety issues, which are not related to competition policy. It has been recommended that the SCPEC be recognised as the state authority, in charge of coordinating consumer protection-related issues. As in the case of the advertising market not having a single agency, with overall management, results in a blurred regulation process, with an unsatisfactory outcome.

### **Judicial Review**

Like in most other countries, the decisions on competition cases by the SCPEC are subject to judicial review. In Armenia, the Economic Court, established in 2001, deals with all civil matters, including appeals under the LPEC. The Economic Court plays the role of the court of first instance. The rulings of the Economic Court can be appealed against at the Court of Cassation, which means that the stage of intervention by the Court of Appeals is skipped in economic cases.

Whilst only a small slate of cases pass through the SCPEC annually, the reality is that this procedure requires a substantial understanding of competition issues at the Economic Court.

The Armenian Law does offer the right to private antitrust cases, in which an economic entity may apply directly to the Economic Court, with no requirement/obligation that the SCPEC should first review the case.

As of July 2004, only one SCPEC decision has been overturned by the Economic Court. This is the *Marshrutka* (Minibus) case, involving allegations of an improper doubling of tariffs. According to the SCPEC ruling, at a certain point, the tariffs had increased without prior approval from the Yerevan City Municipality, which licenses the tariffs. The Court of Cassation upheld the ruling of the Economic Court.

### **Review of Competition Law**

The current competition law in Armenia has faced successive waves of legal reform, primarily to increase harmonisation with the EU law. Moreover, efforts have also been made to create legal and institutional mechanisms to benefit implementation within the local Armenian business and political traditions.

The law and methodology for defining markets already closely resembles those employed by the EU. Market volume is determined by adding up the sales for all business entities in the given market, procured in 'material or cost

### Box 1.1: Banking Sector Regulation

Since the adoption, in 1996, of fundamental banking laws, a reliable framework has been created for the operation of commercial banks. The Central Bank of Armenia (CBA) has adopted further regulations to enable the implementation of the legislative changes, and to ensure the compliance of existing standards with the new laws.

During 1999, the CBA continued to tighten regulatory requirements on the country's 31 commercial banks. Banking supervision has improved, with all banks adhering to International Accounting Standards, since the introduction of a new accounts chart in January 1998. Since 1996, having established a new regulatory framework, the CBA has toughened up its act and is imposing penalties on the violation of prudential regulations. Strong supervision will be vital to the future development of the banking system, within an increasingly competitive environment.

The CBA is due to establish new banking regulations and concepts regarding:

- improving the capital adequacy requirement, through the clear definition of capital as well as the improvement and simplification of loan classification and the loan loss reserve method; and
- classification and appraisal guidelines, to determine the overall quality of banks' investment portfolios.

As a result of the banking system restructuring, the participation of government officials in the management of banks was eliminated. The state shareholding in the banks' equity capital comprised only 2.4 percent at the end of 1999. The shares in the last bank to be restructured – Armsaving Bank – were

sold by 2000, thus completing banking sector privatisation.

There are no restrictions on the establishment of foreign-owned resident banks, as long as CBA licensing and prudential requirements are met. There are no restrictions on both inward and outward capital flows for non-residents; on the payment system; the inflow of foreign currency; or the import of securities reflected in foreign currency. Resident legal and non-legal bodies may carry out operations on current and capital transfers from bank accounts without any restriction. There are eleven foreign resident banks in Armenia.

The CBA's principal, medium-term objective is to further develop its capacity to formulate and implement monetary policy, in order to achieve low inflation. At the same time, the policy will be directed towards facilitating the creation of a banking system that channels both domestic and foreign savings efficiently to investment, and provides an improved range and quality of financial services.

To accomplish these goals, the CBA will develop and enhance indirect instruments of monetary policy, whilst implementing a wide array of structural reform measures designed to consolidate the banking system and increase its currently marginal role; strengthen banks' capital base and prudential standing; improve accounting as well as the legal and regulatory framework. These reforms are expected to enhance sustained economic growth by deepening financial intermediation; in particular, by leading to the emergence of term financing, and by imposing a hard budget constraint on enterprises, through the elimination of quasi-fiscal support via bank financing.

Source: [http://www.armembassycanada.ca/business\\_financial1.htm/](http://www.armembassycanada.ca/business_financial1.htm/)

value'. There is no explicit description of market share determination, but one assumes it involves simply dividing the sales volume of one firm by the given total market volume.

There is currently no concept of extraterritoriality in the LPEC. This has caused SCPEC some difficulty in cross-border cases.

Armenian competition law also suggests an approach to Abuse of Dominance that resembles the EU doctrine. Article 6 of the LPEC defines a firm as having a dominant position if it: has no competitors or is not exposed to any substantial competition; or has a market share amounting to one-third of the overall consumption for a given market.

Armenia maintains the CIS-wide tradition of keeping a ledger of firms with 'dominant' positions, and then tracking their behaviour. More than 75 percent of antitrust cases that have been conducted at the SCPEC in 2003 involved firms registered in the ledger. This practice has been described, in many instances, as an extremely inefficient use of scarce resources by competition agencies, in addition to throwing an unfavourable light on firms for simply being large.

There is no explicit reference, in the Law, to the regulation of prices. However, Article 7.2 (a) defines an abuse of dominant position as the "direct or indirect imposition of unjustified purchase or selling prices, or other unfair trading conditions contradicting the legislation of the Republic of

Armenia or existing commercial usage, which lead to the restriction of competition, or are undertaken by the company not facing significant competition”.

This article increase the discretionary power of the competition authority, and therefore, lends itself to potential abuses, due to the ambiguous description of ‘unjustified pricing’ or the restriction of competition.

Article 7.2 (a) is roughly equivalent to Article 82 (a) under EC law, which defines abuse to consist of ‘directly or indirectly imposing unfair purchases or selling prices, or other unfair trading conditions’. The distinction between ‘unfair’ prices and ‘unjustified’ prices is quite significant.

According to our knowledge, there have been no cases on price discrimination brought before the SCPEC, but there have been cases cited under ‘unjustified prices’. This could prove to be a controversial point of law in Armenia, since the nature of ‘justifying’ a price by a private firm is quite complex.

The SCPEC has published a methodology for determining unjustified prices, in which comparisons are made between the sale price and general price indices. These depend on whether the appropriate comparison includes wholesale, consumption, or service markets. Should the given price index be greater than the sales price, then investigations shift to cost and profit. The figures are then compared to other product lines, within the company, for goods that are not considered to be in a dominant position. This concept does not currently include consumer welfare, which is a hotly discussed topic within the SCPEC.

The Armenian Competition Law also resembles the EU law in its approach to concentrations. Article 8 of the RA Competition Law deems a concentration as: (a) a merger of economic entities; (b) an acquisition by an economic entity of at least 35 percent of the assets of another economic entity; (c) an assumption of control by one or several economic entities of at least 35 percent of another

economic entity; (d) an acquisition... (e) Or any other unification....

According to Article 9, if the combined total gross income of a merger is more than or equal to US\$4mn, or if one of the parties is ‘registered’, then the concentration must be declared. Article 10(1) specifically prohibits any concentration that leads to a dominant position, unless it ‘fosters the development of competition’, which appears to be a rather stringent criterion.

Furthermore, the Competition Law refers only to horizontal mergers, involving companies ‘operating in the same product market’ and, thus, does not cover vertical and conglomerate mergers.

### Concluding Observations and Future Scenario

Like many countries in the former Soviet Union, Armenia faces many problems in terms of economic development. A legacy of central planning and privatisation, together with a dominance of special interest groups within the Government, has created many concentrated sectors and little innovation in the economy.

Armenia also faces geopolitical frustrations along with the ongoing closed border with Turkey and Azerbaijan. The Competition Law in Armenia, like many transition economies of Central and Eastern Europe, closely resembles Articles 81 and 82 of the Treaty of Rome, which provide a strong foundation.

The competition agency in Armenia, the SCPEC, however, has quickly achieved a number of standards of international best practice in its three years of existence. With strong institutional development and the materialisation of a comprehensive competition culture, amongst the business community and populace, competition policy could emerge as a dynamic force. The future prospect of competition policy in the Republic of Armenia, therefore, looks positive.

<sup>†</sup> **Michael W Nicholson** is an economist with the Centre on Institutional Reforms and Informal Sector (IRIS) Centre at the University of Maryland, having worked on the United States Agency for International Development (USAID) contract on competition policy in the Republic of Armenia. He has been previously employed at the Federal Trade Commission and the US International Trade Commission (USITC), both in Washington, DC. He earned his MA and PhD in Economics from the University of Colorado at Boulder, and his BA from Transylvania University in Lexington, Kentucky. His research interests include international antitrust, multinational enterprises, and intellectual property rights (IPRs).

<sup>††</sup> **Lilit V Melikyan** works as a Competition and Regulatory Economic Advisor with USAID/BearingPoint Inc. on the Commercial Law and Economic Regulation Programme in Armenia. She has previously worked as an economist with the USAID/BearingPoint project on Tax, Fiscal and Customs Reform in Armenia. She has an M SocSc in Economics from the University of Birmingham, UK, and has been a research fellow with the Local Government Initiative (LGI) – LGI of the Open Society Institute, Budapest since 2001. Her research interests include competition and regulatory policies, and enterprise restructuring in transition countries. She has more than ten years of experience in working with international development projects on: social insurance reform (USAID/PADCO, Inc); PRSP development for Armenia (UNDP); Poverty and Social Impact Analysis of Water Sector Reform in Armenia (DFID); and as a Senior Programme Officer (Eurasia Foundation).