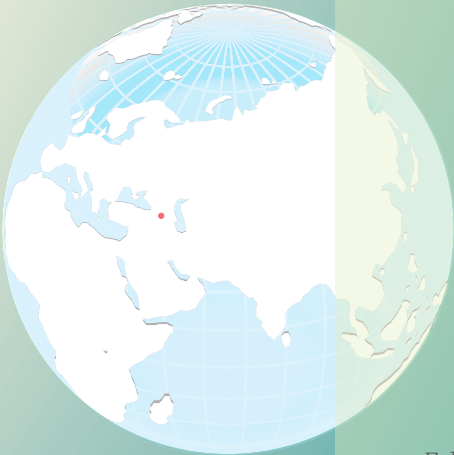


# Monopolies in Armenia



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# MONOPOLIES IN ARMENIA

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## Forward

The Hrayr Maroukhian Foundation (HMF) with the financial support and assistance of the Friedrich-Ebert-Stiftung (FES) of Germany has commissioned a number of studies and policy papers contained within its series, “Social Reforms in Armenia.” While the focus of these papers has been on specific sectors such as agriculture, education, social housing, etc., they have also always included the economic impact of ineffective policy and lack of vision. This current study reflects on one of the most critical problems facing Armenia – the existence of monopolies. Economists, political powers, the business community and civil society in Armenia have repeatedly discussed and debated the issue of monopolies however practical and feasible solutions have not been designed or applied.

The study, “Monopolies in Armenia,” which the Hrayr Maroukhian Foundation presents to the public attempts to answer a number of questions, proposes solutions and makes specific recommendations to regulate monopolies in the country.

The current economic policy practices of the Republic of Armenia does not secure market competitiveness, nor does it have in place the proper mechanisms to regulate the existence and continuing rise of monopolies. This has led to abuse of market power, market distortions, lack of economic competition for goods and services they provide, and persistent market entry barriers. Today, certain sectors in the country’s economy are highly monopolized and this serves as an impediment to securing competition and diversification in the market

The study looks at the global experience in the struggle against monopolies, presents examples of how other countries have developed mechanisms for regulation and securing competition in their national economies, analyzes the state of markets in the Republic of Armenia, provides an overview of government policy and the activities of the State Commission for the Protection of Economic Competition, and proposes recommendations for the regulation of monopolies in Armenia.

The HMF is confident that this study will also be a valuable tool for researchers, economists, students and others because of the vast body of information contained therein.



# 1. The Problem of Monopolies in Economics: Theory

## 1.1 Monopoly: Definitions and Key Features

### 1.2 The Impact of Monopolies on Economic Development

### 1.3 Classification of Monopolies

## 1.1 Monopoly: Definitions and Key Features

Safeguarding a genuine framework for economic competition, regulating the existing economic monopolies, and fixing the market distortions and deformations caused by them are major issues for the economic policy of the Republic of Armenia. The economy of the country is presently highly monopolized, leading to anti-competitive practices inflicting damage upon numerous economic agents. Despite regularly publicizing the problem of monopolies, little has been done in Armenia to study theoretical and practical aspects of government regulation of monopolies. In the absence of practical propositions and adequate measures to address the problem, monopolies remain the single most serious impediment to the economic development of the nation. Hence, the elimination of monopolies in Armenia has become the key precondition for free trade with the EU.<sup>1</sup> Furthermore, some believe that the EU has set the elimination of monopolies as a precondition for trade in order to facilitate the ease of access to the Armenian market for EU companies. Thus, it is crucial for the economy of the country to develop a comprehensive national model for regulating monopolies and communicating it to the public, with firm belief and a feasible framework for implementation.

The term “monopoly” is not unequivocally defined in the economics literature.

The word “monopoly” derives from the Greek words *μονο* (“one”) and *πωλέω* (“I sell”). The words used in Armenian are “մենաշնորհ” (lit. “single privilege) and sometimes “մենաստեր” (lit. “single owner”). To distinguish between a monopoly buyer and seller, one could use the terms “մենապահանջ” (lit. “single seller”) and “մենապոլորդ” (lit. “single buyer”).<sup>2</sup> In economics literature, the term “monopoly” is used to characterize a market quantitatively and qualitatively.

To develop a comprehensive understanding of and to study monopolies, it is important to have clear information about market practices, especially competition—an essential element of markets. Monopolies have historically emerged as a result of the formation and development of market relations. Competition, alongside product and service prices, supply, and demand, is a vital premise of markets. As an economic category, competition reflects the production and trading practices related to success, economic conduct, efficiency gains, and advantageous po-

1 Mediamax, Eliminating Monopolies in Armenia: A Precondition for Free Trade with the EU, 13 April 2012 (<http://www.mediamax.am/ru/news/society/4641/>).

2 Mikayel Mikayelyan, Monopolies in the Republic of Armenia: An Impulse or an Obstacle for Economic Development?, Papers of the Conference on Monopolies in the Republic of Armenia: Problems and Solutions, 7 November 2005, ARF Bureau Office, Yerevan, page 9.



sitioning in markets relative to competitors. Competition is the rivalry between sellers (or buyers) for maximum profits or that between consumers for purchasing products. Monopolies have emerged throughout the formation of competitive relations, when competition aimed at profit maximization, rather than average profits. It involved harsh methods of competing for sources of raw materials and prices of new technologies. Subsequently, it would become an obstacle to the development of market relations.

The proponents of classical theories of economics viewed free competition as the basis for market relations, as defined by the multiplicity of buyers and sellers that were individually unable to affect markets. In his famous *The Wealth of the Nations*, Adam Smith referred to the “Invisible Hand” regulatory function of the market, effectively characterizing the perfect market competition. Such were the methods of competition in the Middle Ages between guilds and unions of merchants: the economic theories of the time were built upon the concept that government interference in economic affairs should be limited to a minimum. As Robert Heilbroner, the economist, put it, the great enemy to Adam Smith’s system is not so much government per se as monopoly in any form.<sup>3</sup>

Free competition was typical of classical capitalism. In economics theory, the neoclassical approach views monopolies as a structural type of the market, defined by the following terms of competition between companies in a market environment: there is only one seller of a unique product in a market, i.e. there are no near substitutes of such product, and only one company is involved in selling it; there are insurmountable or serious obstacles to entering a particular product market in a particular sector, such as the “economy of scale” (need for large-scale capital investments for becoming economically engaged in a sector), the excellence of the monopoly (exclusive ownership rights of patents or control of sources of raw materials), unfair competition, and the like.

In the 1870s, on the backdrop of scientific and technological progress, free competition was replaced with imperfect modes of competition, including monopolies. Free competition gave way to monopolistic competition. The transition to monopolistic associations was fueled by not only the consolidation and concentration of manufacturing, entailing the capital buildup within an enterprise or group, but also capital acquisition of competitors in the same or other sectors of the economy. Capital concentration due to the merger and acquisition of competitor enterprises and companies grew rather intense at the end of the 20<sup>th</sup> century, especially in the economically more advanced countries. The USA was the leader in the process. In *The Economics of Imperfect Competition*, Joan Robinson identified the role of concentration in the formation of a monopoly: concentration is inevitable, and the dominance of large production over smaller scale is logical, as it primarily enables lowering the costs of production. Emerging giant monopolies can regulate the market situation through quotas and other methods of restricting

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3 Robert Heilbroner, “The Wordly Philosophers: The lives, times and ideas of the great economic thinkers.” Touchstone publisher, New York, NY, 1999, pp. 67-71.

capital flows to a sector, as well as a system of price management. The management of a sector becomes concentrated. On these grounds, Robinson's explanation differs from Marshall's theory on pricing. She introduces the notion of market segmentation and price differentiation, and shows how pricing occurs in a particular market depending upon the monopolization of a specific segment. In the broadest terms, market segmentation represents the sale of the same product to different categories of customers at differentiated prices. Thus, low prices are initially set for products in new markets. In contrast, prices are inflated when introducing new products. To drive out competitors, monopolies also dump prices. Monopolistic economic policies, including price maneuvering, are an essential factor of pricing in monopolistic competition, rather than one-off incidences.

Economists have mixed views on monopolies due to a country's level of development, geographic position, and historical era. The term "monopoly" can be interpreted in countless ways. It is a market process involving a single buyer or seller. It is practically impossible to find a situation where a product has only one producer in the market, without any similar peers. A monopoly is often construed as a certain market structure that is dominated by the only buyer (acquirer) or seller of a product, without near substitutes.<sup>4</sup> Under the current legislation of the Republic of Armenia, an economic agent is deemed to have a monopolistic position in a product market if, as a seller or buyer, it has no competitors. In *The Economic Competition System in Market Economics*, Arshakyan describes monopolization as a type of economic relationship in which an economic agent compels the contract parties, contrary to their wish, to engage in conduct that is beneficial for such agent and manipulates market demand for its interests by deriving large profits.<sup>5</sup> In the *Economics Theory* handbook, Khachatryan defines a monopoly as the exclusive right enjoyed by or granted to certain individuals, a group, or the government for engaging in production, crafts, trade, and other activities. The aim of a monopoly is to derive excess profits by means of controlling prices or production volumes.<sup>6</sup> A glossary of economic terms defines "a monopoly" as a market in which the number of sellers is so small that any of them is capable of influencing the total volume supply and price of a product or service.<sup>7</sup>

A variety of criteria are used to describe market economies and monopolies. Huge corporations conquer the market with a view to imposing their monopolistic prices upon buyers and affecting demand for the sake of profit maximization. Competition is not eliminated where monopolies operate; rather, its forms, scale, and methods undergo changes that exacerbate the monopoly. It may seem that a monopoly, having exclusive control of a particular production or product market, can constantly increase its output, sell it, and derive excessive profits. In practice, however, it is not true: firstly, constant increases in production are constrained by limited resources; secondly, the supply-demand equation affects output increases in a way that grow-

4 I. M. Algebova, R. G. Yemtsov, and A. V. Khvolopov, *Government Economic Policies*, Moscow, 1998, p. 254.

5 A. H. Arshakyan, *The Economic Competition System in a Market Economy*, Yerevan, Tntesaget, 1997.

6 G. H. Khachatryan, *Economics Theory, an academic handbook*, Yerevan, 2007.

7 G. Kirakosyan, H. Ghushchyan, and I. Tigranyan, *Glossary of Economic Terms*, Yerevan, Tntesaget, 1999, p. 283.

ing supplies may reduce prices and incomes. Therefore, a monopoly asserts authority over the market, which substantiates the following definition of a seller monopoly: a seller will dominate a market alone, if it can increase the product price by means of reducing its production volume. Another key aspect of a monopoly market is that it limits the free entry of other companies to a particular production of goods or services.

Thus, the key features of a market monopoly are as follows:

- An entity has a 100 percent share of a market;
- An economic entity controls all production in a market, and its conduct affects the market price;
- The sold product is unique, which is why the buyer must either pay the price set by the monopolist or refuse purchasing the product;
- The product is not replaceable;
- The monopolist's complete control of the product price or product volume sold creates obstacles that are difficult to overcome for other participants of the market; and
- The monopolist exercises control of prices and can change them by means of changing the quantity of goods marketed.

## 1.2 The Impact of Monopolies on Economic Development

The current market economy situation in Armenia reveals the following main flaws of post-Soviet evolution and transformation: neglect of economic competition as a driving force of the economy, underestimation of the importance of a competitive environment, the failure to view the promotion of competition as a priority for economic reforms, and the virtual absence of any government regulation of competition.

Competition is the cornerstone of a functioning market, a core institution for modern economic development. Market competition often turns into its opposite, i.e. a monopoly, which limits price competition and free access to a sector of production, exacerbates wealth polarization in society, inflicting enormous damage upon the public, and reduces the efficiency of public production relative to perfect competition.

Nowadays, the government has an important role in regulating markets, contributing to competition in markets, on the one hand, and regulating monopolies, on the other. However, there is a key element: the entities and persons in charge of government regulation must be competent, honest, and not corrupt, with a statesmanlike mindset. During any period in history, individuals have played a huge role in regulating certain sectors and steering the pathways of economic development.

At present, economic competition in Armenia is negatively affected by a number of factors, which have led to monopolies in a number of sectors of the economy and the emergence and strengthening of various manifestations of imperfect competition, undermining future development of the whole society. The privatization of state-owned assets in the early phases

of the transition economy, the breakup of the former Soviet planned system in which various enterprises were interdependent, and the lack of any legal framework regulating competition severely affected the formation and evolution of the competitive environment in Armenia immediately after gaining independence. However, the distortion of competition by monopolies is considered not only negative from a historical standpoint: the end of the industrial revolution largely contributed to structural changes in the economies of all the developed countries. Industrial factories had an unprecedented role in the economic growth of nations. However, all such development required large-scale capital investments. In this context, joint-stock companies were formed to concentrate the capital of large and small entrepreneurs and channeled it for the development of large enterprises. Monopolies actually took the place of free competition in markets. Therefore, one may conclude that, at different stages of development and in different locations, monopolies have influenced the development of national economies in different ways, and their impact has been varied. A number of countries, including, for instance, the European states implementing economic policies with a social focus, were actually encouraging the operation of large enterprises and monopolies. They were either state-owned companies or companies under strict government control. In this way, their governments pursued the following aims:

- a) Solving the problems of employment and a number of other social problems;
- b) By exercising control of strategic enterprises and natural monopolies, creating a favorable environment for other sectors of the economy to grow;
- c) Providing government support to boost the competitiveness of such companies in the international market; and
- d) Carrying out an active public investment policy with scarce financial resources.<sup>8</sup> Other countries, such as the USA and Canada, despite having abundant resources and domestic potential for economic strengthening, have implemented rigid policies vis-à-vis monopolies.

Based on the current pace of economic development of Armenia, one can state that monopolies are negatively affecting the development of the national economy, distorting free competition in the market. Monopolies have the following negative consequences for the economy of the country:

1. Higher prices of goods and services: the population spends vast sums of money to purchase goods and services in the market, ending up with a smaller volume of goods and services because of high prices;
2. Higher inflation: as the main goal of monopolies is to maximize profits, they always try to increase the prices of their goods and services, without ever lowering them. It is commonly known that the prices of essential commodities are not elastic, i.e. people end up paying excessive prices for essential goods and services that they need, regardless of their willingness

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<sup>8</sup> A. Rustamyan, *Where We Stand*, Papers of the Conference on Monopolies in the Republic of Armenia: Problems and Solutions, 7 November 2005, ARF Bureau Office, Yerevan, page 4.

to do so. In reality, though, the prices had to be far lower. The amount of cash in circulation grows faster than it would have, had the commodities not been monopolized; hence, inflation accelerates.

3. Underdevelopment of capital and securities markets: no monopoly is keen on sharing its ownership and excess profits. Hence, no monopoly enterprise is willing to issue shares, undermining the development of corporate governance, which in turn jeopardizes the economic development of the country.
4. No growth and development of small and medium-sized business: many economic entities wish to access a monopolistic market because monopolies manage to be super-profitable. Unfortunately, there are numerous impediments to accessing a monopoly market, including, most notably, the reluctance of the holder of a monopolistic position, which would try, at any cost, to obstruct the entry of new players. Therefore, neither the natural buildup of innovation nor modernization takes place, both of which, according to Schumpeter, are key drivers of long-term economic growth.<sup>9</sup> However, it is worth noting that economic agents holding monopolistic positions can afford to make large investments in research and innovation.
5. Limited competitiveness in external markets: in the absence of competitors in the national market, domestic producers fail to introduce modern technology in their production process, which restrains their ability to grow hand-in-hand with similar producers in external markets. As a consequence, the products and services of companies that hold monopolistic positions within a country become non-competitive in external markets. It then affects economic development and competitiveness in the international market. If this process continues long, the commodities of a country lose their appeal in foreign markets. Eventually, the country stops being of any interest to foreign investors. In the long run, the country loses its global competitiveness.

As early as in the beginning of the 20<sup>th</sup> century, Joseph Schumpeter, the Austrian economist, showed that a monopoly can positively influence the development of society and the economy: effective monopolies and effective competition can coexist under certain circumstances. These ideas are reflected in his well-known books, such as *Capitalism, Socialism, and Democracy*, *The Theory of Economic Development*, and others. Schumpeter argues that innovation is crucial to boosting the competitiveness of enterprises by enabling them to improve product quality and augment production volumes.<sup>10</sup> Innovation and the introduction of new technology, which are rather costly, are normally affordable only for larger enterprises. In other words, large firms are capable of not only withstanding such competition, but also

9 M. E. Sandoyan, Economics and Finance Chair, Russian–Armenian University (“RAU”) Vice–Rector for University Education Development. Problems of Corruption and the Monopolization of the Economy in Armenia, Annual Symposium (3–7 December 2007). Compilation of Research Papers, in 2nd Ed. Part 1, Social Sciences and Humanities, Yerevan, RAU Print, 2008, p. 2 (<http://www.rau.am/downloads/Sandoyan/articles/69.pdf>).

10 The Defence of Monopolies in the Theories of J. Schumpeter and J. Galbraith, 9 March 2009, at <http://www.economy-web.org/?p=98>.

becoming monopolies that can extract excess profits. Schumpeter distinguishes such monopolies from the monopolies that receive licenses from the government or ownership forms that are granted control of special resources. Schumpeter calls them efficient monopolies. Such monopolization aspirations are related to improved efficiency of production. The profits derived from monopolies are the gains of innovation, which are stamped out when new technologies are introduced in the relevant production or service sectors. In the latter half of the 20<sup>th</sup> century, these views were defended by the famous American economist and sociologist John Galbraith in the *American Capitalism*, *The New Industrial State*, and *Economics and the Public Purpose*.

An upside of a monopoly is that, whilst overpowering a large number and small and medium-sized enterprises, it also ensures the stability of their operations, becoming a client for such enterprises. Often, hundreds or even thousands of small and medium-sized enterprises work for a monopoly enterprise. Such a monopoly is a monopsony—a market in which there is only one buyer of goods, services, or resources. The word monopsony is derived from the Greek words μόνος (mónos—“single”) and ὄψωνία (opsōnía—“purchase”). The interconnect- edness of such operations provides much stability for the activities of small and medium-sized enterprises, including employment and income stability for their employees. Another impor- tant upside is that a monopoly enterprise normally offers better conditions in terms of employ- ment and wages than its non-monopolistic peers. All of this has not only economic, but also important social significance. Monopolies invest in corporate planning, governance, and mar- keting, which have become essential elements of modern commodity economies.

However, despite the upsides, monopolies have many downsides that seriously undermine the economic development of nations.

As a product of competition, monopolies are inherently keen on suppressing competitors, hence also competition. As a monopoly is the only producer or seller of goods or services, it tries to affect demand, making it more predictable, but not in the interests of consumers. Mo- nopolies time their supplies on the basis of the production capacity of their enterprise. In this way, monopolies engage in direct manipulation of consumer behavior, forcing them to use goods that they do not necessarily need. Thus, monopolies affect free competition in the mar- ket and buyer demand, tailoring the latter to their production capacity and capability. Mo- nopolies often do not contribute to scientific and technological progress, as they prefer profit maximization by means of raising prices of goods and services, rather than minimizing costs. Moreover, to maintain their monopolistic position in a particular commodity market, they may procure licenses the use of which will allow them to produce substitute products that could compete with the monopolistic products. As any monopoly tries to maximize the scope of its influence, it sometimes enters into the domain of government activities, including legislation, public administration, and foreign policy, in order to fortify its economic position with the gov- ernment's help. Such negative influences on national economies could be felt as early as at the

end of the 19<sup>th</sup> century. To address them, rigid anti-monopoly policy measures were implemented in countries like the USA.

Contemporary economists believe that the proliferation of monopolies reduces economic efficiency for at least three main reasons:<sup>11</sup> firstly, to maximize profits, monopolies have lower output and higher prices relative to a perfect competition. It means that the resources of society are not fully utilized, and production efficiency is not maximized. Secondly, as a single seller in the market, a monopoly does not try to lower costs of production. It is not deemed a priority concern. For the same reason, monopolies are not too interested in research and development; neither are they keen on new acquisitions and innovation. Thirdly, economic efficiency is held back by the obstacles for new firms to enter into monopolized markets, as well as the enormous resources and efforts invested by monopolies to prevent such entry.

Thus, a monopoly has very negative consequences for the economy of any country. It reduces the quality of products, the economic efficiency of production, and output, leading to unemployment and shrinking income. To this end, Fred McChesney claims that economists are confident that monopolies and other barriers to trade are negative, because they usually result in shrinking of total output.

### 1.3 Classification of Monopolies

In *The Theory of Monopolistic Competition*, Edward H. Chamberlin demonstrated that real markets exist between perfect competition and monopolies. Any monopoly is constrained by the existence of alternatives. On the other hand, perfect competition *per se* is precluded because of product differentiation. Hence, the real market is not necessarily monopolistic: there are always competitors and monopolies in it. To this end, he showed that monopoly and competition are the two different sides of a market relationship, manifesting themselves in various combinations and to varying degrees. Chamberlin convincingly showed that real competition is always a specific interim condition between “pure” competition and “pure” monopoly, which is due to a number of factors such as the level of product differentiation, the promotion status, firm placement, and production concentration. In other words, the existence or absence of competition (and therefore, also the market mechanism) depends on the material structure of the economy.<sup>12</sup>

In contemporary approaches to economics, perfect competition stands next to imperfect forms of competition, which are not necessarily addressed by the anti-monopoly and competition laws. Economics literature describes imperfect competition as monopolistic competition, oligopoly, or a monopsony. Monopolistic competition is defined as the existence of a relatively

11 Economics, 3rd edition, revised and supplemented, edited by professor A. S. Bulatov, doctor of economics, YURIST, Moscow, 1999, at <http://www.bibliotekar.ru/economika-8/173.htm>.

12 Edward Chamberlin, *The Theory of Monopolistic Competition: A Reorientation of the Theory of Value*. Chamberlin's book, first published in 1933, had eight publications in English (the last publication during the lifetime of the author was in 1962), at [www.economicus.ru](http://www.economicus.ru), p. 5.

large number of firms in the market, which produce differentiated products. An oligopoly is when a small number of firms operate in a branch. A monopoly is when one firm controls all supplies of a product or service in a market. A monopsony is when there is a single buyer of certain products or services in the market. The main models of market structure and their specific features will be presented below.

Table 1. Main Models of Market Structure and Their Specific Features

Market Type	Number of Business Entities in the Market		Product Homogeneity	Product Substitution	Mutual Replaceability of Market Entities	Market Entry and Exit	Market Share of Entities
	Seller	Buyer					
Perfect (pure) competitive	Many	Many	Homogenous	Complete	None	Free	Equal and not large
Monopolistic competition	Limited	Many	Differentiated	High degree	Insignificant	Limited	Dominant enterprises and small share
Oligopoly	Several	Many	Homogenous or differentiated	None	Significant	Limited	Large
Monopoly	One	Many	Homogenous		None	Restrained	100%
Monopsony	Many	One	Minor differentiation or homogeneous	Insignificant	None	Restrained	100%

While the many buyers and sellers in a perfectly competitive market mostly cannot affect the market, and there is not much need for the government to intervene regulating the market, the government has an important role when the competition is imperfect. In countries with a developed market system, several large firms (monopolies) dominate virtually all the branches of production; in the sector as a whole, there is an oligopoly. However, a limited number of firms have considerable economic power in such markets. They affect the current market prices, setting the price that maximizes the profit. As a result, the product sale terms and competition forms and methods change. This type of competition often has negative consequences such as uneven distribution of income and lower living standards of the population.

In monopolistic competition, a particular firm produces a small share of the total market supply. Hence, it has limited ability to influence price. Unlike an oligopoly, this market type is characterized by many competitors, but their number here is smaller than in a perfect competition. The number of firms in a particular branch is such that any agreement between firms becomes simply impossible, yet each of them is so free that it does not have to pay any attention to how the competitors react to its decisions. Here, the products of competing firms are differentiated, homogenous, but still, the product of one enterprise differs from that of another, and the differences are not only external. Product differentiation means that, despite the products of different firms serving the same useful purpose, each product has a peculiar feature. In monopolistic competition, there are virtually no entry or exit barriers, because large



firms cannot pose any barriers for new competitors. On the other hand, a new competitor entering into the branch knows that there is a balance and it needs to invest in advertisement in order to promote its product. It becomes an additional barrier for new entrants. In monopolistic competition, promotion works in the following way: demand is expanding, helping the firm to strengthen the control over price. Influenced by advertisement, a buyer might not lower its demand for the product even if the price is increased. Furthermore, obtaining information about such a market is rather difficult but possible, because prices are still set freely. Prices are more competitive when there is monopolistic competition. Hence, we may conclude that monopolistic competition inflicts less damage than other types of imperfect competition. In monopolistic competition, the pricing always differs from Marshall's partial equilibrium model. A monopoly is not demand-neutral: it consciously affects demand. Prices of monopolistic products will be determined not only by marginal costs, but also the search for demand equilibrium points driven by the profit maximization motivation. Under other conditions, the less elastic demand for products, the higher the price set by a monopoly for its products. Chamberlin concluded that profit maximization in monopolistic competition can be secured by higher prices and lower output than in the case of perfect competition. Costs would not fall to the level of marginal costs, unlike Marshall's model.

There are two methods of monopolistic competition: the price method (lowering of prices) and the non-price method (based on technical innovation, improved product quality, product innovation, and improvement of sales methods). Under price competition, firms use price maneuvering for better benefiting from the market structure. A competitor might set a high monopoly price that will secure a high monopoly profit or might temporarily set a low monopoly price in order to oust a weaker competitor from the market. The price set by the leading competitor will last until such time when the other competitors agree not to maneuver prices, especially the prices set by the leading firm. However, marginal costs also need to be cut in order to maximize monopoly profits, and such cost reduction is primarily related to the introduction of new technologies and technological improvements. It is very expensive and rather time-consuming. Hence, in a competitive struggle, firms often shift from price competition to non-price competition.

Non-price competition engages means that are not directly related to prices. The competition toolkit includes key non-price factors such as product quality, appearance, convenience, after-sale service, and credit. Promotion is an important tool of non-price competition. It allows lifting entry barriers and reducing consumer sensitivity to price. Product quality improvements and price reduction ensure greater value for every unit spent by consumers. This form of competition makes collusion harder and reduces profits even in branches with few competitors.

Oligopoly is another type of imperfect competition. Oligopoly is defined as the small number of sellers in a market. The first debate on oligopoly was initiated by Cournot, who analyzed

competition between two sellers. Subsequently, his findings were endorsed by Chamberlin on the basis of the analysis of competitive behavior between three to four producers. However, the idea of oligopoly was elaborated in economics by Robinson, Stackelberg, Fellner, and Machlup. They not only classified oligopoly, but also presented the main types of oligopolistic behavior. An oligopoly is the small number of firms in the market, which may or may not have homogeneous products. In an oligopoly, there are more producers than in a monopoly, but fewer than in the case of perfect competition. An oligopolist has a dominant position over price, but its power is limited, because it has competitors. Enterprise decisions often affect the competitors' demand, prices, and profits, complicating the decision making by firms. When deciding what price to set, how much to produce, or what product quality to offer, a firm has to consider the potential response by the competitors. Business decisions of firms are interconnected. Hence, each seller's well-being depends on the policies pursued by its main competitors. The entry barriers are rather high here, as the members of an oligopoly act in unity against new entrants. A firm is rarely able to withstand such pressure and overcome the barriers. Obtaining information about an oligopolistic market is also quite difficult, as prices are decided on the basis of neither the labor theory of value nor the marginal utility theory. In an oligopoly, the competition does not revolve around price, because price reduction does not result in higher demand given the limited number of sellers and limited supply, and because the competitor enterprises pursue the same strategy. However, oligopolists do not necessarily compete. They are very keen on colluding to increase prices and limit output. To maximize the total profit, oligopolists often enter into secret agreements creating cartels. However, cartels tend to be violated. In an oligopolistic market, every colluding firm is highly motivated to violate it in order to maximize its share of the total profit. Economics literature distinguished between two types of oligopolies. One type of oligopoly is the combination of a few large firms that have the same or virtually the same product. However, each one of them has sufficiently large output to affect the whole market. The other type of oligopoly involves several large firms that have differentiated products. Examples of this type of oligopoly include the production of steel, aluminum, and the like. If an oligopoly controls 60 to 80 percent of a market, it is called a "dominant oligopoly." Given the diversity of market situations, oligopolies are divided into two parts: markets dominated by two to three firms, and markets dominated by six to seven firms accounting for 70 to 80 percent of sales in the market.

Historically, the first monopolies were the conventions, rings, corners, and pools. They were short-term agreements between enterprises setting common sale prices for certain products. Subsequently, other monopolistic structures formed, such as cartels, syndicates, trusts, concerns, conglomerates, and consortiums.

A cartel is an association of several enterprises of a branch of production, in which the participants maintain ownership of the production means and the output. Every participant is the seller of its product in the market. Cartel agreements concern quotas in total production, sales

prices, marketing distribution, and the like. If any participant violates the agreement concluded in advance, it has to pay large monetary fines and penalties.

A syndicate is another monopoly: it is the association of several enterprises that produce the same product. The competitors maintain ownership of the production means, but the product is sold through a syndicate office.

A trust is formed when entrepreneurs transfer the ownership of technologies, patents, and production outputs to the association. For the trust placed under common ownership, the participants get trust shares through which they participate in management of the trust and profit distribution. There are two types of trusts—vertical and horizontal. A vertical trust involves enterprises of different branches that are technologically interconnected and are called combination trusts. A horizontal trust brings together different enterprises of the same branch.

A conglomerate is a huge industrial complex under common financial control of organizations operating in different sectors that are technologically not interconnected. As a rule, conglomerates belong to the same firm and have differentiated non-competing products of one or several phases or production or control different market segments that do not intersect. In this case, an enterprise enjoys broad autonomy of decentralized business management.

A consortium is formed on the basis of a temporary agreement between several banks and manufacturing corporations with the aim of jointly engaging in large-scale financial transactions or implementing large-scale manufacturing projects (making large loans, building marine canals or gas pipelines, and the like). After the common project is completed, the consortium is liquidated.

The emergence of monopolistic associations was accompanied by the strengthening of economic and business ties between individual enterprises, and association with other companies first within a branch, then in other connected branches. During this process, specialization in production technologies has taken place, followed by cooperation between enterprises and companies, which eventually contributed to deriving monopolistic profits and the strengthening of imperfect competition.

In the modern era, enterprise mergers and acquisitions are intensively happening in branches of aerospace, chemical, radio-technical, and electronics manufacturing. The largest monopolies, such as chemical and pharmaceutical industries, try to absorb small and medium-sized companies engaged in the production of the newest products, such as biotechnologies and the search for new drugs and treatment methods. International monopolies are rapidly forming, as well. They rely on the capital of their countries or other countries. Transnational and multinational monopolies conquer new markets, benefiting from cheap labor force in emerging nations, to achieve unprecedented monopolistic profits.

New phenomena have been observed in global economics starting from the late 1970s. Competing transnational corporations enter into cooperation agreements on not only pro-

duction, trade, and finance, but also research and development. It primarily concerns projects that one corporation cannot afford in terms of financial and technological resources. Relevant examples include Western-European scientific projects related to the aerospace and the design and creation of aircraft, European destroyers, and American spacecrafts. Corporations enter into an agreement with their competitors not only within their countries, but also in foreign states. Despite strained trade relations, Americans positively cooperate with the Japanese or join Western-European consortiums. The developed industrial countries are clearly not interested in transferring ownership of their high technologies to other countries, because they use the latter to derive super profits and to tap into the resources of foreign states.

Monopolies have recently embarked upon a new stage of development, which involves limiting markets and forcing small and medium-sized enterprises out of the market. In a competitive global market, they open branches in other countries and turn into transnational corporations. A new trend has been observed since the 1980s: transnational corporations of developed countries come together to compete globally.

Depending on the means by which enterprises acquire the status of a closed seller of products in the market, there are three types of monopolies—closed, natural, and open. In many countries, closed monopolies protect government monopolies like the post, telecommunications, gas, fuels, electricity distribution firms, and the like from competition. Such monopolies are protected from competition through production licenses, permits, copyrights, and legal restrictions. Such monopolies are close to government-supported monopolies.

Natural monopolies are rare. They are considered to be government-owned or are government-controlled. Natural monopolies include public utility enterprises that use unique natural resources, such as electricity and gas enterprises and water supply, communication, and transport firms. Such a monopoly is conditioned by a specific result of massive production—the need to make efficient use of resources given the massive scale of production. Modern technology and efficient utilization of the capacity of large enterprises increase labor productivity, reducing the production unit costs. Hence, a natural monopoly is considered good from the standpoint of the public interests. However, a natural monopoly has downsides, as well. As to the upsides, natural monopolies are able:

- To gain the most out of the production economy of scale, which will reduce the production unit costs;
- To mobilize significant financial resources for proper maintenance of the production means;
- To benefit from the achievements of scientific and technological process;
- To follow consistent standards of production and service delivery; and
- To create an institutional hierarchy and contractual framework that would reduce losses due to risks and uncertainty.

The downsides of natural monopolies include:

- The possibility of setting the sales prices and transferring the costs on to the final consumer, which can be counterproductive, for instance, in the form of higher tariffs of gas, electricity, or water;
- The possibility to curb technological progress;
- The possibility of “savings” by reducing the quality of products and services; and
- The possibility of administrative imposition that may transform the structure of the economy.

Economics glossaries refer to the following two types of natural monopolies:

1. A monopoly that is due to special natural conditions such as the climate, resource scarcity, characteristics of the sphere of activities, and the like; and
2. For any volume of output, production by one firm is more efficient than production by two or more firms.<sup>13</sup>

An open monopoly is a situation in which a firm is the only supplier of products in a market for at least a certain time period, without enjoying any special protection from competition. Firms that are the first to enter a market with new products will often find themselves in such a situation.

In a market, neither a perfect monopoly nor perfect competition may exist in pure form.

Monopolies can also be classified into institutional, technological, economic, artificial, or discriminating monopolies, monopsonies, or duopolies.

**Institutional Monopoly:** This is an association of enterprises and organizations engaging in the same production activity, which is a public administration institution (branch ministries, concerns, associations, and corporations).

**Technological Monopoly:** This is an enterprise controlling the production and consumption of a certain product, the production technology of which is peculiar in terms of the massive scale of its output. Such a monopoly may involve the production method or narrow specialization.

**Economic Monopoly:** This is a situation of absolute control of a certain type of production activity. It arises either through a deal or an agreement between different business entities, or as a result of competition.

**Artificial Monopoly:** This is a monopoly created by the government for the purpose of production concentration or decentralization. In this situation, the government helps in solving social problems, especially protecting jobs.

**Discriminating Monopoly:** This is a situation in which the same product is offered to buyers at different prices within the same time period. Discrimination can be applied when a monopoly controls the market. Three types of discrimination are distinguished: geographic, material, and personal. In the first case, a seller may set different prices for the same products using the different transport location of settlements. Such discrimination can be applied when

<sup>13</sup> G. Kirakosyan, H. Ghushchyan, and I. Tigranyan, *Glossary of Economic Terms*, Yerevan, Tntesaget, 1999, p. 275.

there are protective customs tariffs, and the product has a high price in the domestic market but is sold at a much lower price in external markets with a view to positioning there. Losses are offset through high prices in the domestic market. Such policy of firms is called dumping. Material discrimination is when a monopolist sets the prices or tariffs for the same product or service on the basis of their consumption utility. For instance, natural monopoly sectors, such as electricity supply, set lower tariffs for industrial enterprises than for households. Personal discrimination is when a monopolist differentiates prices on the basis of the demand structure and the potential of consumer payments. Differentiation of medical services is an example. A doctor may set different tariffs for treating the same health condition in different patients depending on their ability to pay.

**Monopsony:** A monopsony is encountered more frequently than a pure monopoly. The consequence of monopsony are that the quantity of products sold is smaller than in a competition, the prices paid to sellers are lower than in a competition, and buyer makes a super profit for every product unit purchased (the difference between the price and the average earnings for the average product or supplied product).

**Duopoly:** This is a situation in which the same product is produced by two firms. As there is competition between two firms, there is no longer total control of product price. The firms agree in the market on prices, territories, and outputs. Such agreements are normally secret, have no legal validity, and can fall apart for any reason.

The aforementioned classifications can be combined or may coexist in the case of a specific monopoly.

A legal monopoly is created on the basis of statute. It can be done under the circumstances of a licensing system (checking copyright of inventions and securing exclusive rights of their primary and exclusive use), copyright (defining the exclusive right of authors to use their creations in any way and form), and trademarks (defining the owners' exclusive right to use trademarks and prohibiting their use by other persons).

In some literature, monopolies are classified based on ownership type into government monopolies, government-regulated private monopoly, and private monopolies free from government intervention.<sup>14</sup> A government monopoly is the existence of a government monopoly in a certain product or service market appearing as the monopoly of specific government enterprises (for instance, railway transport), including barriers to the entry of new firms to a particular branch (for instance, in the field of exports and imports of essential goods of strategic importance). Unlike perfect competition, this type of monopolist sets the price in the market based on market demand and its costs. Thus, in a government monopoly, the monopoly is fully or partially government-owned and is managed by a board of directors appointed by the government. In this case, prices are determined on the basis of government financial policies.

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14 Aleksey Molyakov, *Evolution of Competitive Relations in Natural Monopoly Markets*, Moscow, 2009, pp. 12-13.

A government-regulated private monopoly is controlled by private persons whose activities are most often limited by the government's tariff policies. Prices are determined on the basis of government tariff policies.

A private monopoly free from government regulation operates fully in a market framework that depends on the demand-cost correlation. The market regulates the monopoly through its relative impact on prices.

Depending on the sector of activities, there are infrastructure monopolies and manufacturing monopolies. The operations of the former are limited to social and production services. The operations of the latter concern the manufacturing of various products.

## 2. Monopoly Regulation Models in Different Countries

### *2.1 Government Attempts to Regulate Monopolies (Background, Evolution, Current Trends, and Effectiveness)*

#### *2.2 The Main Models of Regulating Monopolies*

### **2.1 Government Attempts to Regulate Monopolies (Background, Evolution, Current Trends, and Effectiveness)**

As a civilizational paradigm characterizing the development level of human society, a state functions through the use of various levers. Hence, their functional utility can be evaluated by means of analyzing the paradigm of a state and its role in economic growth and development. To date, there is no clear and unequivocal definition of a state that would encompass all aspects of its essence and role (including its role in the economy). The need for state or government regulation of the economy was first comprehensively articulated by John Maynard Keynes.<sup>15</sup> He promoted a theory that was essential to the development of economics thinking in the 20<sup>th</sup> century.

The government has a very important role in preventing the emergence of monopolies and protecting economic competition. To this end, states have carried out targeted economic policies of regulating monopolies. Diverse forms of ownership in countries with a developed market economy create a competitive environment made up of numerous entities and promote competition between them.

Governments came to appreciate the need to regulate monopolies more as monopolies managed, through profit maximization, to extract more resources from society in the form of savings, accumulations, and income. Profit maximization under a monopoly differs from profit maximization in a competitive environment in that a monopolist imposes the product price in the market. If the monopoly wishes to sell less, it can simply increase the product price. If the monopoly wishes to sell more products, it can reduce the price. A monopolist actually manages to cover all market demand, setting the price on the basis of the demand equation:

$$P = D^{-1}(q)$$

where  $D^{-1}(q)$  is the “consumption price” function, i.e. the maximum price at which a consumer would buy the whole quantity (“ $q$ ”) of the product supplied in the market. In other words, it is the price that is reflected by the product quantity in the demand equation:

$$q = D(p)$$

Earnings in a monopoly can be presented in the same way as earnings in a competitive situation, i.e. the product of sales price and quantity:

$$TR(q) = D^{-1}(q)q$$

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<sup>15</sup> Ashot Markosyan and Davit Aghajanyan, *The Role of the Government in the Economic System in The 21st Century* issue number 4 (18), 2007.



In other words, marginal earnings for the optimal volume of production equal to the marginal costs:

$$MR(q) = MC(q)$$

Hence, the producer will increase the production quantity for as long as any additional product produced yields the producer earnings that are greater than the costs incurred to produce it. Similar to perfect competition, identifying the function of costs is a key issue for the monopolistic producer, too.<sup>16</sup> When reviewing demand in a monopoly, it becomes necessary to establish the connection between marginal earnings and price.

In different countries, governments have exerted various degrees of influence on monopolies in different era. However, there are three main trends in market economies:

- 1) Promotion of competitive market institutions countering monopolies through various market liberalization measures;
- 2) Government regulation of monopolies through price and profitability controls; and
- 3) Direct prevention, suppression, or eradication of monopolies with the help of anti-monopoly laws.

Government influence on monopolies is manifested through government regulation of competition. The latter is primarily aimed at anti-monopoly regulation of the economy, which should be viewed as the government's implementation of a comprehensive set of economic, legislative, and administrative measures targeted at the creation of conditions for promoting competition, preventing excessive monopolization of the market, and prohibiting abuse of monopolistic or dominant position by economic entities. The goal of anti-monopoly policies is to protect and realize economic competition and to contribute to enterprise development and consumer protection. Presently, the main goal of anti-monopoly regulation is focusing increasingly on the efficient supply and distribution of resources. Anti-monopoly regulation is a government function called to safeguard the implementation of anti-monopoly policies and its objectives. Anti-monopoly policy is a core aspect of government regulation of the economy, encompassing a set of measures (legislation, tax policies, privatization, and the like) curbing monopolization of production and markets and intensifying competition. Anti-monopoly policy aimed at offsetting the consequences of monopolies promotes various forms of competition and is carried out in a number of areas such as limiting market monopolization, prohibition of mergers between competing companies, prohibition of setting monopolistic prices, and protection and promotion of contemporary forms of competition.

Anti-monopoly regulation is particularly decisive in transition economies where the administrative command system of the economy is gradually substituted with a market self-regulation structure, which still cannot, in the absence of prerequisites for competition, safeguard rapid economic growth and more even distribution of income. Anti-monopoly policy is the government activity of creating conditions for the operation of the market participants

<sup>16</sup> Varian, *Intermediate Microeconomics*, Moscow, Unity 1997, pp. 98–110.

with a view to achieving optimal competition and efficiency in any combination of place and conditions.<sup>17</sup>

The main areas of anti-monopoly policy are as follows:

1. Preventing the creation of monopolies and facilitating the emergence of a large number of producers;
2. Introducing high taxes to limit monopoly earnings, which would weaken the negative social impact of monopolies;
3. Imposing implicit price controls using the monetary tools;
4. Regulating natural monopolies through special agencies created for this purpose;
5. Government regulation of the prices of industrial products;
6. Creation of competitor companies through government financing and concession lending; and
7. The activities of high-concentration monopolies are regulated by anti-trust legislation and policies implemented on its basis.<sup>18</sup>

Economics scholars have expressed different views on the role of competition and anti-monopoly policies in the development of markets, as well as on the issues of regulation of monopolies. In his theory, Adam Smith, a founder of the classical school, emphasizes the role of market competition as a factor regulating the balance between individual and general interests. Hence, any government action aimed at economic regulation is considered extremely negative, as it undermines the effective functioning of “the Invisible Hand” and slows down the buildup of capital. Smith condemns laws and decisions that reduce the number of competitors in specific sectors of production. The proponents of Marshall’s theory believe that an economy based on competition is capable of self-regulation and negatively view government intervention into competition, stating that it is the main cause of monopolization of economy.<sup>19</sup> Fischer, Dornbusch, and Shmalenzi subsequently advocated for minimizing the government’s role: they claimed that, for over 10 years, the American Government had treated the Robinson-Patman Act as if its provisions were declarative. The critics of anti-trust statutes considered them extremely ineffective, arguing that they could not prevent the concentration of business entities in sectors with a relatively low level of concentration. Another widespread opinion is that the provisions of anti-trust statutes are aimed at protecting the interests of monopolists. According to Paul Heyne, competition is often protected by laws prohibiting competition, which often limit the interests of consumers and non-privileged producers and derive benefits for the privileged producers.<sup>20</sup> Walter Eucken, a representative of the German school of neoliberalism,

17 A. G. Gryaznova and T. V. Checheleva, *Economic Theory: A Textbook*, Moscow, Ekzamen print, 2005, p. 592, accessed at <http://vse-uchebniki.com>.

18 G. E. Kirakosyan, PhD, and I. E. Khelghatyan, professor, *Anti-Monopoly Policies of the Government: Economics Theory, a Handbook*. Tntesaget, Yerevan 2000, pp. 173-174.

19 A. Hakobyan, *Methodology of Competitive Regulation*, *Finansner Yev Ekonomika*, issues 4-5, March-April 2005, pp. 124-127.

20 Paul Heyne, *The Economic Way of Thinking*, Moscow, Novosti, 1991, p. 297.

believed that decisive control of monopolies deprives the oligopoly of the incentive to take up a monopolistic position, as the latter may place it under tight supervision of the anti-monopoly agency. He states that, in a competitive order, supervision of monopolistic formations should be so decisive as to have a strong preventive impact. Ludwig Erhard stated in connection with government regulation of monopolies that the government should intervene into the market to the extent that it is necessary for safeguarding the functioning of the competitive mechanism or for establishing control of markets in which the terms of free competition are not as feasible. In *The General Theory of Employment, Interest and Money*, Keynes argued that the market economy system is not at all self-regulating and perfect, and that employment and economic growth can be maximized by active government intervention into the economy. All of these economists mostly agreed that the government should not allow monopolies to emerge and should encourage competition.

Neoclassical, Keynesian, and monetarist economic theories have the same methodological roots, as all three rely on the common values of the market (competition, free pricing, and autonomy) and are based on the same premises (scarcity, alternative, convenience, marginality, and equilibrium).

Armenian economists attach greater importance to the performance of government regulatory functions to address problems in the economy. Academician Khojabekyan mentions the need to strengthen the government's regulatory role in solving social-economic problems. He believes the state should, parallel to monopolies in strategic branches, concentrate the chief resources of the country in the hands of the government, and regulate their reproduction process, the distribution of resources, and the exchange and sales of essential products. Khojabekyan notes that, during a transition to a market economy, support to government enterprises should be combined with a government economic policy promoting competition between enterprises based on different forms of ownership.<sup>21</sup> Important measures implemented by the government include the much-needed promotion of competition, including the government's specific obligation to prescribe legal, economic, and social rules that safeguard competition and prevent the formation of monopoly markets.<sup>22</sup> In *Transition Economy Reforms: Questions of Theory*, professor Kirakosyan writes that even in the most liberal established economy, the government retains an economic role that essentially comes down to the production of social goods, the creation of a legal framework for the market economy, the protection of market competition and the implementation of anti-monopoly policies, macroeconomic regulation of the economy, stabilization of monetary policies, and concrete production activities. Markosyan and Safaryan have argued that monopoly regulation should take into account the economic development trends, because of which it cannot immediately eliminate imperfect competition, but is fully capable of reducing it to a certain point. They believe that the implementation

21 V. Khojabekyan, *The Formation of Market Relations and the Government's Role in the Republic of Armenia*, *Obshchestvo i Ekonomika*, 1999, issue 10-11, pp. 64-68.

22 H. Ghushchyan, *Macroeconomic Regulation*, a training handbook, Yerevan, Tntesaget, 2002, p. 19.

of anti-monopoly policies should primarily focus on economic considerations, such as matching production costs with product prices so as to avoid the creation of an obvious mismatch between a high monopolistic price and the social costs of production. Anti-monopoly regulation should be reasonable and be guided by the essence of the case, rather than formal legal considerations.<sup>23</sup>

In a sporadically self-regulating market competition framework, a certain extent of the government regulatory function aimed at protecting competition becomes more important. Given the impact of the government's role and regulatory function in the former planned economy, market competition could not even be imagined. After the Soviet Union fell apart, the market transformation in the formerly communist countries led to the formation of different forms of ownership. The government ownership monopoly was eliminated, and the foundations for a mixed economy were laid whilst considerably reducing the share of the public sector. This transformation is a difficult and contentious process, but it is in principle not new in the global experience. Under the former Soviet social order, Armenia had a command-and-control system in which government ownership-based monopoly flourished without any competition; it was tied to the monopolistic power of the government apparatus, rather than the market. Artificially-bred monopolies curbed the development of competition and distorted its economic essence. The nation's economy-in-transition inherited the previous system's irrational structure of industrial manufacturing, monopoly as the prevalent form of mutual economic ties, underdeveloped entrepreneurship, and the absence of market infrastructure, which slowed down the development of competition. The products of the Republic were mostly sold in the territory of the Soviet Union. On the other hand, the rushed and often superficial privatization of assets during the transition period further undermined economic liberty and the related free competition framework, as the capital concentrated in the hands of few individuals, facilitating the emergence of monopolies. As a consequence, the formation of a competitive environment in Armenia during the privatization process led to corruption in the economy, increased wealth of a small circle of persons, deterioration of the economic condition of most privatized enterprises, loss of the competitive advantages of large production, and economic disintegration. Besides, government regulation of competition initially lacked the legal framework for regulating and protecting economic competition.

Economic competition protection policies of any country are implemented in the procedure and forms prescribed by laws. The implementation of such policies by the government is driven by the necessity of introducing and safeguarding competitive foundations for the market. The government regulates competition through economic legislation. In the modern era, normative and institutional regulation is of particular importance.<sup>24</sup> Normative regulation implies normative legal acts prescribing conditions for the performance of economic activities, as well as su-

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23 A. Markosyan and R. Safaryan, *Introduction to Market Economy*, Yerevan, 2002, pp. 120-122.

24 K. Y. Totyev, *Competition Law (the Legal Regulation of Competition)*, Moscow, 2000, p. 86.

pervision of compliance with them. Such measures reflect specific government actions aimed at the creation of the relevant forms of the economic order. Institutional regulation is mostly reflected in government efforts of creating various institutions to regulate monopolies, such as anti-monopoly agencies called to make a real impact on economic relations and to secure their effective development. To safeguard the protection of economic competition, the government creates appropriate legal prerequisites. Such activities are core elements of the government regulation of competition, which need to be clearly prescribed in legislation.

In the European Union, anti-monopoly legal provisions are applied concurrently by the Commission and the national authorities. Such provisions are supplemented by national legal provisions in a consistent manner. The European Commission has exclusive authority over mergers that violate competition in the Internal Market. To this end, the domestic legislation of the Republic of Armenia is consistent. The Constitution of Armenia (Articles 8 and 33.1) and the Civil Code (Article 12) prescribe and guarantee free economic competition and prohibit monopolies or abuse of dominant position in the market, subject to legally-stipulated limitations of their permitted amounts. EU legal rules cover the areas of regulation in horizontal and vertical agreements, abuse of dominant position, and control of concentrations.<sup>25</sup> Anti-monopoly laws can, for instance, be applied to prohibit a merger of large corporations resulting in a monopoly or the illegal breakup thereof.

Assessment of the monopoly power is essential for the implementation of government policies of regulating monopolies, the creating a more favorable environment for economic development of the country, and the adoption of legislation safeguarding free competition in product, service, and resource market. In this context, market monopolization can be measured by determining the production boundaries of a commodities market, the entities in a commodities market (composition and number of buyers and sellers), the geographic boundaries of a commodities market, the volume of commodity resources in the market, the shares of economic entities in the market, the structures of quantitative indicators of the commodities market, qualitative indicators of the commodities market (entry barriers), and the market potential of economic entities.<sup>26</sup> The methodological grounds for assessing the competitive environment in markets and the methodological approaches of assessing monopolies are crucial for determining the monopolization level of a market. In the international practice, the monopolization level of a market is commonly determined on the basis of market concentration indicators, i.e. the market share of a certain number of the largest companies.

The following indicators are widely used:

- 1) The market share of the largest four/eight companies: economists use this indicator as the level of market concentration. For instance, if four firms control 40% or more of the market, it is considered an oligopolistic branch. When the largest four companies control more

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<sup>25</sup> Comparative Review of the new Federal Law of Russia and the EU Acquis, Europeaid I19637/C/SV/RU.

<sup>26</sup> K. Hayrapetyan, *Methods and Issues of Assessing Monopoly Power in the Market*, Finansner Yev Ekonomika, # 4-5, March-April 2005, Yerevan, pp. 122-123.

than half of the market, and the largest eight control over 70% of the market, the market is said to have undesirable concentration.

This indicator cannot be used to correctly determine the market power distribution between the dominant firms, which is done using the Hefindahl–Hirschman Index.

2) The Hefindahl–Hirschman Index defines the extent of market concentration. It is calculated as the sum of the squares of the market shares of all the companies in the market. The calculation of this indicator uses the market share of a firm’s product in a branch. The higher the market share of a firm’s product, the greater its market power in a branch.

$$IHH = S_1^2 + S_2^2 + S_3^2 + \dots + S_n^2$$

where  $S_1$  is the market share of the largest firm,  $S_2$  is the market share of the next largest firm, and so on. If there is one firm in a branch, then  $S_1$  equals 100%, and IHH is 10,000.

If  $IHH < 1000$ , then the market is considered not concentrated.

When  $1000 < IHH < 1800$ , the market is considered moderately concentrated.

When  $IHH > 1400$ , there is a “threat to plurality.”

The Hefindahl–Hirschman Index is used to discover monopoly power emerging as a result of company acquisitions or mergers: in this case, concentration is calculated both before and after the acquisition or merger in order to show how much competition will suffer. The main advantage of this index is its sensitivity to any redistribution of market shares.

3) The Lerner Index of Monopoly Power examines marginal costs and identifies monopolies.

In 1934, Lerner, an economist, presented an economic index of the monopoly of specific firms.<sup>27</sup> The criterion of a monopoly is the share of price for which the sales price exceeds marginal cost. It is calculated using the following formula:

$$L = (P - MC) / P$$

where  $P$  is the price and  $MC$  is marginal cost.

This Index can be calculated on the basis of price elasticity of demand—as its negative inverse:

$$L = 1 / E^d$$

where  $E^d$  is the price elasticity of demand for a firm’s product.

The Lerner Index varies within a numerical range of 0 to 1: the higher the Index, the greater the monopoly power of a firm’s monopoly in the sector. It is considered that, in a perfect competition, price equals marginal cost, and the Index is 0. Monopoly power per se does not guarantee high earnings because earnings are a factor of the ratio of average cost to price. A firm might have more monopoly power than another, but have smaller earnings.

The monopoly level can also be determined using Bain’s coefficient (indicator of the market power of firms, which compares a firm’s earnings with average earnings of firms in the market), Tobin’s coefficient (indicator of market power, which evaluates the condition of firms in markets relative to the internal self-assessment of firms), and the Rothschild Index in commod-

27 The Lerner Ratio, [http://ru.wikipedia.org/wiki/Коэффициент\\_Лернера](http://ru.wikipedia.org/wiki/Коэффициент_Лернера)

ities markets (used to determine demand elasticity of the whole market as a factor of demand elasticity for products of specific firms).<sup>28</sup> Market concentration is essential for determining the market structure. However, it does not imply the existence of monopoly power.

In the modern era, changes have occurred in the goals and methods of competitive struggle, as well as the conduct of economic agents aimed at accommodating to the changing conditions of a competitive environment. Every participant of the competitive struggle tries to occupy a dominant position in the market, but the position does not become an absolute monopoly because of the relationship between the participants in the competitive struggle.

## 2.2 The Main Models of Regulating Monopolies

A monopoly cannot be considered illegal per se, because monopoly position in the market might be acquired legally through increased labor productivity using innovation. After all, competition exists in modern market economy in the form of monopolistic competition.

Sophisticated frameworks of anti-monopoly policy have been elaborated especially in developed Western countries that have large domestic markets and developed market economies. An overview of anti-monopoly policy development in Western countries shows that anti-monopoly policies are dynamically evolving in market economies.

Anti-monopoly regulation is implemented using direct and indirect methods. Laws enacted against monopolies are a direct method of anti-monopoly regulation. Indirect methods are based on promotion of the competitive environment and support to medium-sized business through government orders and stimulating foreign investment, rather than restricting market and capital concentration.

To address the problems of monopolies, the government should regulate prices or tariffs of such goods and services, and control their costs and the quality of their goods or services.

States have adopted different laws to prevent the negative consequences of the activity of monopolies, including judicial sanctions for breaching set price caps. Any agreement or association for the purpose of monopolizing any branch of the economy is deemed unlawful.

Anti-trust efforts should take into consideration economic development trends. Hence, while they cannot fully eliminate imperfect competition, they are fully capable of reducing it to a certain level.

Anti-monopoly legislation has been historically implemented in different ways in different countries. Two types of anti-monopoly policy implementation models have historically evolved—the American and European models. The American system is based on the prohibition of monopolies per se. It can also be found in Canada, Japan, and Argentina. The European model does not view monopoly practice as unlawful and simply counters abuse of dominant position. There is also a German model of anti-trust policies.

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<sup>28</sup> Definitions, Topic 3. Sector Structure. Market Concentration and Monopoly Power. <http://russeca.kent.edu/TheoryOfIndustrialOrganizations/definitions/definitions03.html>

In the USA, it is based on the anti-trust legislation. In a number of European countries, it is the policy against restrictive practices. Germany has the cartel legislation. While the American anti-trust legislation viewed monopolies as an evil for economic development, countries of Western Europe, especially Germany, treated monopolies less rigidly in the early 20<sup>th</sup> century—making a decision in favor of monopolies, encouraging the existence of cartels and syndicates.<sup>29</sup> After World War II, the German competition legislation provisions on monopolies were changed along the lines of the American system.

Anti-monopoly policies were first introduced as a government regulation policy and targeted tool in the USA. The term “monopoly” was then for the first time used in the American anti-monopoly legislation.

The USA has a wealth of experience of using anti-monopoly policies for regulation of the economy. In the USA, government regulation is performed at the level of the specific economic sectors in which natural monopolies are often present.

At the end of the 19<sup>th</sup> century, a number of states in the US, such as Alabama, Kansas, and others, enacted anti-trust statutes. In 1890, the Sherman Antitrust Act was federally adopted. The US anti-monopoly legislation was based on three points, including the Sherman Act (1890), the Clayton Act (1914), the Robinson–Patman Act (1936), and the Celler–Kefauver Act (1950). The Sherman Act sanctioned the creation of a monopoly by US \$5,000 and imprisonment for up to one year.<sup>30</sup> The Act prohibited monopolization and prescribed clear restrictions for monopolistic associations. The Sherman Act was the first government response to the demand for anti-trust controls. The main provisions of the Sherman Act were as follows:

Section 1: “Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”

Section 2: “Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony.”

This problem still remains relevant today. The American government for instance, spared no effort to restrict the monopoly of Microsoft, a major producer of computer software, which was essentially an administrative measure. However, as it was a famous corporation representing the USA around the world, the US anti-trust authorities did not pursue it utterly, which is indicative of the government’s attitudes towards a key brand of national policy.

Anti-monopoly legislation was subsequently improved in light of the emerging new challenges. The Sherman Act was supplemented in 1914, 1939, and 1950. Its scope was expanded to

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29 M. Mikayelyan, *Monopolies in Armenia: A Stimulus or Obstacle for Economic Development?*, Papers of the Conference on Monopolies in the Republic of Armenia: Problems and Solutions, 7 November 2005, ARF Bureau Office, Yerevan, page 10.

30 Varvara Ilyina, 15. *Monopoly and Government in a Market Economy: Monopoly Power Criteria*, Shpargalka po Konkurencii, <http://lib.rus.ec/b/204776/read>.



cover new types of activities and associations or agreements. The Sherman Act was designed to protect trade and industry from unlawful restrictions and monopolies.

A number of statutes were enacted in the second half of the 20<sup>th</sup> century, including the Hart-Scott-Rodino Act of 1976, which introduced a number of important amendments to the anti-monopoly regulation.

Influenced by monopolies in the late 1890s and the early 20<sup>th</sup> century, capital concentration in the USA led to the formation of large enterprises that subjugated whole branches of industry, such as “Standard Oil” in the metal industry or “General Motors” in the machine-building sector.

American monopoly corporations found many ways of circumventing the enacted anti-monopoly statutes. For instance, they made extensive use of transferring assets and securities to a trust administrator. Transnational corporations developed as a result of bypassing the statutes in this manner. During this very period, there were attempts of preserving classical free competition during the formation of corporate capitalism. The first monopolists, such as John Rockefeller, J. P. Morgan, and Andrew Carnegie, did not enjoy respect in either the public or the government. However, it is now clear that the activities of these first “business kings” became the source of the present-day economic might of the USA.<sup>31</sup>

The development of any monopoly concentration leads to a large part of national income and national wealth concentrating in the hands of a small group of large monopolists, as confirmed by statistics on the 20 largest processing industrial corporations of the USA, which accounted for 48.3% of total processing industry assets in 1948 and 60.1% in 1969.<sup>32</sup>

Anti-monopoly laws can, for instance, be used to prohibit a merger of large corporations resulting in a monopoly or their unlawful division.

The anti-monopoly policies turned around during the 1929–1933 economic crisis and the ensuing complete breakdown of 1933. In the 1960s, there was active government intervention in the competition between the market participants. In light of the Chicago school research conducted in the 1930s, government regulation methods were liberalized. The economists of this school thought that government intervention was mandated only when negative market conduct of entities could be clearly found.

Anti-monopoly policies are generally conducted in a more active and structured manner in the USA than in other Western countries. Nonetheless, monopolies often bypass the law, and the government bodies called to safeguard anti-monopoly laws often fail.

**The Clayton Act (1914)** prohibited horizontal mergers. The Federal Trade Commission was formed in 1914 to fight against unfair methods of competition. The Commission:

- 1) Oversees enforcement of the consumer protection statutes;
- 2) Prohibits deceptive advertisement — effective from 1938; and
- 3) Prevents the practice of explicit agreements.

31 E. Balatskiy, Shortcomings of Anti-Monopoly Regulation, *Ekonomist* #5, p. 47, 2003.

32 N. S. Kazitskaya, Anti-Monopoly Regulation System in the USA, *Vladivostik*, 2001, p. 6.

The list of unlawful monopolistic practices and the definition of capital concentration were clarified, and measures against company mergers were prescribed. The Act prohibited price discrimination against buyers, as well as the acquisition by a firm of all or a part of the shares in another firm. The Clayton Act was aimed at discovering and prohibiting specific business practices. When there is “substantial lessening” of competition or tendency of “creating a monopoly,” the Act prohibits:

1. Price discrimination, i.e. demanding different prices from buyers in different markets, which is not related to transportation or other costs;
2. Imposing contracts, i.e. the practice of sellers demanding the buyers to buy other products;
3. Exclusive dealings, i.e. an agreement between a producer and retail seller, which prohibits the seller from buying the product from competitor firms;
4. Interlocking shareholding: one firm buying the shares of a competitor firm; and
5. Interlocking management: the same person may not be a member of the boards of directors of competing firms.<sup>33</sup>

The Clayton Act prohibited setting different prices for different buyers, if it is aimed at monopolization or reducing competition. The Act also prohibited mergers or asset acquisitions when it resulted in substantially reducing competition.

**The Robinson-Patman Act (1936)** corrected and supplemented the Clayton Act, prohibiting trade practices aimed at preventing, undermining, or prohibiting competition in the market. Its main purpose was to prohibit the use of various trade discounts in the absence of real savings and transaction costs. The Federal Trade Commission and the US Department of Justice may file lawsuits on the basis of the Robinson-Patman corrections, although the burden is fully assumed by the Federal Trade Commission. While this Act is capable of promoting competition, it may also easily turn into a tool protecting from competition.

**The Wheeler-Lea Act (1938)** authorized the Federal Trade Commission to limit business activity in specific sectors, if it considers that such activity endangers the public interests due to deceptive or false advertisement and the production of counterfeit products.

The 1947 Act on Prohibition of Private Monopolization and Maintenance of Fair Trade prohibited attempts of establishing controls over markets, limiting production, or cartel agreements on fixed prices.

**The Celler-Kefauver Act (1950)** prohibits mergers through the acquisition of assets, i.e. it is a statute that clarifies the definition of unlawful mergers, as the latter could undermine competition. The Act prohibited horizontal and vertical mergers.

Sanctions against monopolies were tightened in the USA in the years of high inflation in the 1970s.

The US government bodies performing anti-monopoly regulation functions are the Interstate Commerce Commission created in 1887, which had the power of regulating railway,

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33 A. G. Gryaznova and T. V. Checheleva, *Economic Theory: A Textbook*, Moscow, Ekzamen print, 2005, p. 592, accessed at <http://vse-uchebniki.com>.

cargo, and bus transport prices, waterways, and the like. After the adoption of the Sherman Act in 1890, the Antitrust Division was created in the Department of Justice, which to date is considered the main regulatory authority. It has the power to initiate lawsuits against persons violating the antitrust legislation. Besides the Department of Justice, the Federal Trade Commission has similar powers. The latter was formed in 1914. The main burden of this work falls upon the federal courts, primarily the Supreme Court of the USA. Most of the states in the USA have their antitrust statutes. The Federal Power Commission was created in 1930 with a view to regulating electricity, gas, and oil pipeline tariffs. The Federal Communications Commission was formed in 1934 to regulate telephony, television, the radio, telegraph, radio telephony, and subsequently also the Internet.

The competition laws of European states do not prohibit dominant or monopolistic positions. What is prohibited is abuse of the dominant position. From 1890 to the late 1920s, the USA prohibited dominant or monopolistic positions. However, from the 1930s, the USA no longer prohibits dominant or monopolistic positions. Having dominant or monopolistic positions is not prohibited. Abuse of dominant position is prohibited. The history of development of states shows that, in the years of World War I, the largest firms in Europe received government orders, while small and medium-sized enterprises were falling apart. In Europe, England, for instance, was successfully implementing the monopolization process, even though the English legal literature and jurisprudence do not have the general concepts of unfair competition. The so-called dealing under someone else's name is considered the main anti-competitive practice. In the early 1980s, three of the largest five monopolies of the world were American and the other two English (Royal Dutch Shell and British Petroleum, both oil companies).<sup>34</sup> Government regulation of the economy in England differed from the evolution in the USA. Anti-monopoly legislation of Great Britain originated in 1919 when the Speculation Act was adopted with the primary aim of prohibiting unreasonable increases in prices. The Act allowed the Department of Trade to carry out a study on product prices, output, and earnings. After World War II, completely new objectives were set, including first of all the fight against unemployment. In furtherance of these objectives, the Monopolies and Restrictive Practices Act was adopted in 1948. The Restrictive Trade Practices Act was adopted in 1976. During the decade that followed, anti-monopoly law developed in Great Britain naturally until 1998 when the Competition Act was adopted, the provisions of which generally coincide with the provisions of the European anti-monopoly legislation.

The provisions of the Restrictive Trade Practices Act adopted in 1956 were further elaborated in the 1964 Resale Prices Act and the 1965 Monopolies and Mergers Act. Up until 1998, the anti-monopoly legislation of Great Britain stood apart by the fact that the legislative provisions did not contain penalties or sanctions. The latter would be applied only if the same economic

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34 M. V. Konotopov and S. I. Smetanin, *History of Economics*, 2003, University Textbook, 6th ed., Moscow, <http://uchebnik-besplatno.com/istoriya-ekonomiki-uchebnik/ekonomicheskaya-istoriya.html>

entities reoffended. Sanctions would be collected only through court procedure. This fact limited the effectiveness of anti-monopoly policies in Great Britain.

The 1998 Competition Act entered into force on 1 March 2000. The Act was adopted in view of developments in the EU legislation to restrict monopoly practices and unfair competition. The law prescribes, in particular, numerous requirements on the terms and procedure of conducting a variety of transactions and provides new measures for the government to apply in respect of the activities of entrepreneurs in commodity markets. Similar to the past, the 1973 Fair Trading Act remains the legislative act regulating the activities of monopolies and organizations that have a dominant position in commodity markets. The 1973 Act prescribes the procedure and conditions of government oversight of certain forms of capital concentration. The main authorities implementing anti-monopoly policies in England are the Office of Fair Trading and the Monopolies and Mergers Commission. Their functions include general oversight. They normally focus on companies that control at least 25 percent of the markets. They make limited use of direct administrative methods in the performance of their functions.

The European model of anti-monopoly legislation was aimed against monopolistic abuses and oversight of monopolies. Unfair competition rules were applied in Great Britain, France, Australia, New Zealand, and a number of Western European states.

Some countries in Western Europe (Belgium in 1935, the Netherlands in 1933, and Denmark in 1937) try to introduce legislative oversight of cartel agreements. The laws were mostly intended to prohibit abuse by cartels as a form of monopoly.

France has had anti-monopoly legislation since 1953. However, active measures against monopolies began in the 1970s. Prior to it, abrupt anti-monopoly policies were believed to have a potentially negative impact on domestic production. In the process of mergers, more rigorous controls are applied in respect of horizontal mergers. While the maximum quota on vertical mergers of companies in the market is 40%, the quota on horizontal mergers is 25%.

Final decisions on restricting monopoly activities are taken through an administrative process, rather than by court. Their main goal is government control of prices.

In France, the anti-monopoly regulations are coordinated by the Economy Ministry together with the Competition Authority.

Italy was somewhat late, compared to other European countries, to adopt anti-monopoly legislation in 1990. The Italian legislation is considered relatively liberal among the anti-monopoly laws of European countries. Even sales quotas for specific firms are not regulated.

Articles 85 and 86 of the **Rome Treaty** prohibit monopolistic agreements.

All of these laws were aimed at safeguarding free markets and fair competition and imposing controls of different forms of agreements. European countries, especially the EU Member States, do not prohibit the existence of monopolies and grant privileges to exporting companies in order to promote exports of products. Among such countries are the Netherlands and France. The competition laws of the European countries do not prohibit dominant or monop-

listic market positions. What is prohibited is the abuse of dominant position, i.e. such conduct of economic entities having such positions, which would undermine stability in the market.

In Germany, monopolies developed in the second half of the 19<sup>th</sup> century and the first half of the 20<sup>th</sup> century in a way that cartels and other monopolistic associations were considered tools of economic instability as a consequence of “wild” competition and the so-called “price war.” To this end, Ludwig Erhard’s following quote on monopolies is well-known in Germany: “In its economic history, Germany never had as many unemployed people as in the period when cartels flourished.”<sup>35</sup> A cartel is an agreement between several enterprises operating in the market, which has the aim of restricting competition. The Law on Cartels, adopted in Germany in 1923, became the country’s legislative response to hyperinflation. It was built around two key principles: prohibition and the regulation of monopolistic practices. However, even this Law did not prohibit the conclusion of cartel agreements. The law essentially only required cartels to register in a special government authority that had the power to control that cartel participants did not become absolute monopolies in the relevant sectors. As a consequence, the cartel law did not significantly influence the cartel agreement practice, and the number of cartels continued to grow.

In Germany, anti-monopoly policy law emerged somewhat later than in the USA. It was due to the fact that cartels were widespread, especially in the heavy industry. During World War II, inevitable government intervention in economic life resulted in greater concentrations. Laws adopted by the allies after the war against cartel agreements resulted in a complete ban on cartels. Since then, Germany approximated its anti-monopoly legislation to the American model.

The Cartel Law adopted in 1957 marked the beginning of regulation of the sector. The law has been seriously amended five times since its adoption. With these amendments, the legislature tried to provide utmost protection to the interests of small and medium-sized trade organizations with a view to protecting competition.

In Germany, the main authority exercising control of enterprises that have a monopolistic position is the Federal Cartel Office created in 1958.

Germany is considered to be one of the countries that have special legislation against unfair competition. The main legal act is the 1909 Law against Unfair Competition (amended on 17 December 1999), which defines specific measures against unfair competition. The legislative provisions concern the sanctions for violating competition. The anti-monopoly legislation of Germany is based on two key principles: prohibition of monopolies (similar to the USA) and control of monopoly practices (similar to most EU countries). The anti-monopoly law, also known as the Law on Cartels, was adopted in 1957 (currently in effect as amended on 26 August 1998), which prohibits cartels. There are many countries that do not have specific laws against unfair competition. They rely on the generic legal provisions to fight against them.

In 1973, Germany adopted legislation introducing a process of government control of enterprise mergers. It led to the prohibition of a number of mergers.

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35 Ludwig Erhard: *Wohlstand für alle* (Prosperity for all), Düsseldorf/Vienna, 8th edition 1964, p. 185 f.

The anti-monopoly legislation of Germany refers to two possible types of cooperation between enterprises—cartel agreements or trading agreements. The legislation prohibits cartel agreements and decisions. According to its provisions, an agreement signed between organizations or associations and enterprises in pursuit of a common objective or merging business is invalid, if it can affect production or market terms or turnover, or restrict competition in goods and services. The German anti-monopoly legislation prohibits cartel agreements under substitution contracts. In 2002, a special association was formed to fight against cartel agreements, which helped to make decisions and plan and implement measures and evidence assessment in respect of cartel agreements. The number of cases filed in respect of cartel agreements and the number of cases with initiated proceedings have grown by the year. During 1994–1997, five cases were filed and seven were instituted. During 1998–2001, the numbers reached six and seven, respectively. During 2002–2005, there were nine and 11 cases, respectively, and 14 and 20 during 2006–2009. During the aforementioned period, the amounts of penalties increased, as well, from 165 million Euros during 1994–1997 to about 1 billion Euros in 2006–2009.<sup>36</sup> The average fine per entity increased sharply, especially in recent years, from 1.2 million Euros during 1994–1997 to over 12 million Euros in 2006–2009. The lion's share of the fines, mostly in Germany, involved commodity markets such as cement, industrial insurance organizations, gas sector companies, roof tile production, decor paper production, and coffee selling companies.

The Japanese model of anti-monopoly policies resembles the American model. Prior to World War II, large monopolistic industrial enterprises had a significant and leading role in Japan. However, the 1947 Act on Prohibition of Private Monopolization and Maintenance of Fair Trade was more rigid towards monopolies than the American statutes. It prohibited attempts of establishing controls over markets, limiting production, and cartel agreements on fixed prices. The 1947 Law did not permit financial institutions to purchase more than five percent of the shares in other companies. It prohibited the merger of firms and management, if it would result in “substantial weakening of competition.” For a long period after World War II, the Japanese government did not allow production unless two or three competitors emerged in the market.

However, such policies mostly restricted the economic development of Japan. In 1953, the provisions hindering the development of key sectors of the economy were repealed from the law. The formation of anti-crisis cartels was permitted. The provision on forced separation of monopoly companies was repealed. The restrictions on mergers were alleviated. The Japanese anti-monopoly legislation was considerably amended, leaving in it mostly provisions on controls. Japan presently has relatively liberal anti-monopoly legislation. A firm that controls 50% of the market is considered to have a dominant position. If two firms control at least 75% of the market, they are considered to have a dominant position. Contentious issues are solved through negotiations, rather than by court or administrative procedure.

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36 Effective cartel prosecution: Benefits for the economy and consumers, BUNDESKARTELLAMT, [http://www.bundeskartellamt.de/wEnglisch/download/pdf/Kartellverfolgung\\_eng\\_web\\_bf.pdf](http://www.bundeskartellamt.de/wEnglisch/download/pdf/Kartellverfolgung_eng_web_bf.pdf)



## **3. Economic Competition Protection Model in the Republic of Armenia**

*3.1 Development and Legal Regulation (Specificities, Structure and Powers of the Regulatory Authority, Comparison with Other Countries)*

*3.2 Assessment of the Competition Situation by International Organizations*

### **3.1 Development and Legal Regulation (Specificities, Structure and Powers of the Regulatory Authority, Comparison with Other Countries)**

*Republic of Armenia Legislative Framework Regulating Competition; Specificities Compared to Other Countries*

Like many of the former-Soviet states, Armenia was somewhat late adopting laws and other legal acts safeguarding competition.

The legislative foundation for the implementation of relevant policies and protecting economic competition thereunder includes the Republic of Armenia Constitution, Civil Code, Law on the Protection of Economic Competition, Law on the Protection of the Domestic Market, Law on Anti-Dumping and Compensation Measures, and sub-legislation adopted by the Republic of Armenia Government and State Commission for the Protection of Economic Competition. Provisions prohibiting restrictions of economic competition exist in other branches of legislation of Armenia, such as the Law on Banks and Banking, the Law on Energy, the Law on Credit Organizations, and the Law on Regulation of Public Services. The effectiveness of the aforementioned legal acts is due to the correlation between the results of their actual enforcement and the social objectives pursued thereunder. Enforcement objectives are used as the criterion for assessing the effectiveness of legal provisions.

The Republic of Armenia Constitution and the Law on the Protection of Economic Competition declare that the general and specific objectives of the economic competition protection legislation include the free development and equal legal protection of all forms of ownership, the freedom of economic activities, free economic competition, the protection and promotion of economic competition, the creation of a favorable environment for fair competition, facilitation of business development, and consumer protection. The effectiveness of the economic competition protection legislation implies not only cooperation between economic entities and government authorities, but also the development and furtherance of a competitive environment in markets.

Structured adoption and development of the Armenian legislation regulating economic competition essentially began in 2001. The Law on the Protection of Economic Competition (adopted on 6 November 2000) was adopted rather late for Armenia. The Law provides key



definitions, structure, and principles, similar to the anti-monopoly laws of many post-Soviet states. The aim of the Law is to protect and promote free economic competition, to safeguard the environment necessary for fair competition, and to facilitate business development and consumer protection in the Republic of Armenia.

Other countries might have a wider range of tools for the protection of economic competition or the fight against monopolies, including other laws regulating the sector. In Switzerland, for instance, the laws regulating this sector include the 6 October 1995 Federal Act on Cartels and Other Restraints of Competition, which is called to prevent the negative economic and social consequences of cartels and other restrictions of competition, thereby promoting free competition in the interests of a free-economy market.<sup>37</sup> Switzerland's legal acts regulating cartels also include the 17 June 1996 Ordinance on the Control of Concentrations of Companies and the 12 March 2004 Ordinance on Cartel Act Sanctions. In Italy, the sector is regulated by the 10 October 1990 Act on Competition and Fair Trade (number 287), which is aimed at protecting and safeguarding free entrepreneurship enshrined in Article 41 of the Italian Constitution by means of fighting against unfair agreements, abuse of dominant position, and concentrations.

The Armenian law covers the acts or practices of economic entities and central and local government bodies, which can result in limitation, prohibition, or prevention of economic competition, or unfair competition. The Law contains provisions against anti-competitive agreements, dominant position, concentrations, and unfair competition practices, as well as the goals and functions of the State Commission for the Protection of Economic Competition, the procedure of presenting the Commission's annual program and report, the powers of the Commission, the composition of the Commission and the term of its members, the legal grounds for the termination of their membership, the procedure of organizing the activities of the Commission, the legal grounds of enforcing sanctions for violations of legal provisions on economic competition, and so on.

The Republic of Armenia Law on the Protection of the Domestic Market (adopted on 18 April 2001) played an important role in the implementation of anti-monopoly policies, as it regulated the implementation of domestic market protection measures in respect of goods imported to the territory of the Republic of Armenia. Under Paragraph 1 of Article 4 of the Law, the domestic market protection measures include increases in the current rate of customs duties on imported goods, the application of quantitative restrictions (quotas) on imported goods, and any combination of the aforementioned measures. According to the Law, domestic market protection measures shall be implemented when a study carried out in accordance with the established procedure has shown that imports of the studied product to the Republic of Armenia are growing (in absolute terms or in terms of their share in total output in the respective sector of the economy) or at terms that inflict or threaten to inflict serious damage upon the respec-

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<sup>37</sup> Federal Act on Cartels and other Restraints of Competition (Cartel Act, CartA), of 6 October 1995 (Status as of 1 January 2011), <http://www.admin.ch/ch/e/rs/2/251.en.pdf>, Article 1.

tive sector of the economy.<sup>38</sup> Importantly, though, the Republic of Armenia Law on the Protection of the Domestic Market was never applied in practice. Moreover, since its adoption, Armenian producers lost their previously favorable positions in some commodity markets.<sup>39</sup> The Republic of Armenia Law on Anti-Dumping and Compensation Measures (adopted on 19 June 2002) is considered a step towards legal enforcement of anti-monopoly policies and anti-dumping policies, in particular, as the Law regulates the domestic implementation of anti-dumping and compensation measures in relation to goods imported to the Republic of Armenia territory, which inflict damage upon the respective sectors of the economy. Furthermore, despite the fact that the Ministry of Economy is primarily responsible for economic policies, it has been rather passive in raising the problems affecting economic competition and steering policies. To date, practical measures have not been implemented to ensure the proper enforcement of the aforementioned legislation. Hence, the proposition about “safeguarding equal conditions for all the participants of the economy” posted on the Ministry’s website appears nothing but declaratory.

Unlike the constitutions of CIS member states, such as Azerbaijan (Article 15), Georgia (Article 30), Kazakhstan (Article 26), Russia (Article 34), and the Ukraine (Article 42), which do not contain a constitutional ban on unfair competition per se,<sup>40</sup> the Constitution of the Republic of Armenia contains the following provision regarding the protection of economic competition:

“Monopolies, abuse of dominant position in the market, and unfair competition shall be prohibited.

The restrictions of competition, the possible types of monopolies, and their permitted scope may be defined only by law, if it is necessary for the protection of interests of the public.”<sup>41</sup>

The analogous legal act of Germany concerning practices restricting competition prohibits its enterprise agreements and concerted action aimed at restricting competition.<sup>42</sup> Or, the 23 March 1999 Law on Competition of another European country, Lithuania, (Law VIII-1099 as last amended by XI-434 on 24 September 2009) is aimed at protecting fair competition in the Republic of Lithuania. This Law regulates government conduct that may or do restrict competition, as well as unfair competition practices. It defines rights, obligations, and sanctions, and creates the legal framework for the relevant government authorities to fight against practices restricting competition and unfair competition.<sup>43</sup>

38 Republic of Armenia Law on the Protection of the Domestic Market, adopted on 18 April 2001, Paragraph 2 of Article 4.

39 A. Petrosyan, Armenia’s Competitiveness: the Example of Foreign Trade with Turkey (some comments on economic security), Droshak, Yerevan, 2011.

40 Aghavni Hakobyan, Regulatory Prerequisites for the Protection of Economic Competition in the Republic of Armenia, *Finansner Yev Ekonomika*, #4-5, March-April 2005, Yerevan, p. 130.

41 Constitution of the Republic of Armenia, Article 33.1.

42 § 1. Prohibition of Agreements Restricting Competition, *Gesetz gegen Wettbewerbsbeschränkungen* (Act against Restraints of Competition, ARC), [http://www.bundeskartellamt.de/wEnglisch/Legal\\_bases/Legal\\_basesW3DnavidW2627.php](http://www.bundeskartellamt.de/wEnglisch/Legal_bases/Legal_basesW3DnavidW2627.php)

43 **Republic of Lithuania, Law on Competition**, 23 March 1999 – No VIII-1099, Art. 1, (As last amended on 24 September 2009 – No XI-434), [http://kt.gov.lt/en/index.php?show=antitrust&antitrust\\_doc=law\\_competition](http://kt.gov.lt/en/index.php?show=antitrust&antitrust_doc=law_competition)

### *Activities of the State Commission for the Protection of Economic Competition and the Implementation of Competition Policies in Armenia*

According to the definition in Article 17 of the Republic of Armenia Law on the Protection of Economic Competition, the State Commission for the Protection of Economic Competition is responsible for the protection of economic competition. Its primary functions include oversight of compliance with the legislation on the protection of economic competition, rendering appropriate decisions on violations of the legislation on the protection of economic competition, development and implementation of measures preventing violations of the legislation on the protection of economic competition, participation in the development of economic competition, and the development of legal acts regulating government policy in this area and their submission in accordance with the relevant procedure. Under Article 18 of the Law, the main functions of the Commission are the protection and promotion of economic competition for the purposes of business development and promotion of consumer interests, the creation of a favorable environment necessary for fair and free competition, the prevention, restriction, and warning against anti-competitive practices, and oversight of the protection of economic competition.

The economic history of nations has generally shown that anti-monopoly laws are hard to implement in practice. Difficulties arise in connection with the assessment of the dominant position, the finding of agreements as anti-competitive, and the assessment of unfair competition. Despite numerous attempts to prescribe and regulate them clearly by legal acts, many practical steps are influenced by the personal bias of the staff of competition authorities, because competition policies are developed and implemented through the competition authorities. Within the limits of its powers under the law, the Commission implements government policies of competition protection on the basis of the annual program of the Republic of Armenia State Commission for the Protection of Economic Competition approved by the Commission every year.

As a result of fundamental legislative changes enacted in March 2011, the Republic of Armenia Commission for the Protection of Economic Competition received more powerful tools to fight against anti-competitive practices in the market. As a result, the outcome of the Commission work changed radically: the number of sanctioning decisions increased by 100% and the amount of fines increased five-fold. It is expected that this change will very soon lead to substantial improvements and increase confidence in anti-monopoly policies. Many of the factors undermining competition lie outside the Commission's control. Participants receiving unequal treatment by the tax and customs authorities are not even in the market, as their cost burdens vary. Since the creation of the State Commission for the Protection of Economic Competition, it has been a key factor to the effectiveness of the Commission.

In Armenia, the policy-making authority in the field of the protection of economic competition is the Ministry of Economy.<sup>44</sup> Interestingly, though, one cannot feel the practical impact of

44 Bylaws of the Ministry of Economy of the Republic of Armenia, approved by Republic of Armenia Government Decree 1229-N dated 11 July 2002.

the activities of this agency on economic life in general and the competitive environment and policies in particular. In reality, the government policy for the protection of economic competition is implemented by the Commission on the basis of the annual program of the Republic of Armenia State Commission for the Protection of Economic Competition approved by the Commission every year. The annual program approved by the Commission is apparently the closest to being viewed as the document containing the policies on the protection of economic competition. In other words, the same authority is essentially developing the policy and implementing administration in the field of the protection of economic competition.

The weak framework for contract enforcement is a key legal obstacle to the improvement of the competitive environment. Laws on trade transactions are weak, and contracts are mostly concluded informally with the aim of prohibiting market entry.<sup>45</sup> Contracts are concluded with reference to the general provisions of the core legislation, rendering contract enforcement uncertain. Contracts are most often drafted on the basis of the “unless otherwise provided by law” caveat, rather than “unless otherwise provided by this contract.” Besides, the adjudicating courts do not take into consideration the existing case law; in the context of the uncertainty related to the trade laws, judges are viewed as not very competent or honest.

Corporate governance of enterprises is weak due to weaknesses in the legal framework and institutions, as well as the existence of informal structures. Other problems are due to the additional costs (such as telecommunications and transport costs) born by enterprises because of the weakness of institutions enforcing the legal framework (such as corporate structures) and their activities, as well as the business regulation and governance rules and functions (such as the arbitrary and unpredictable conduct of tax and customs authorities).

Widespread endemic corruption—from the lowest entities to top circles of government—create a breeding ground for distorting competition and promoting monopolistic practices in the country. The system is characterized by mutual obligations arising out of arrangements and agreements between entrepreneurs. Similar relations have emerged between entrepreneurs and the judiciary. A person acting as the defender of another person becomes his “patron,” and the protégé undertakes to compensate for such services in one way or another. Foreign investors often do not have the connections required to find a “patron” and encounter more difficulties in dealing with the bureaucratic structures and the judiciary. Moreover, in many cases, foreign investors encountering “local partners” or “local competitors” are unable to continue their investment and business projects in Armenia. Despite recent developments, cunning tricks are used to restrict the activities of new participants in the market, from difficulties created in the customs clearance of goods to frequent inspections initiated by various government bodies.

Amendments to the Republic of Armenia Law on the Protection of Economic Competition have improved the provisions of the Law in terms of both structure and implementation. How-

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45 Policies to Sustain Growth, Poverty Reduction and Economic Management Unit, Europe and Central Asia Region, Armenia, the Caucasian Tiger, in 2 volumes, World Bank, 30 May 2006.

ever, there are still problems related to the legal acts regulating the sector, the powers of the State Commission for the Protection of Economic Competition and the economic entities, and the enforcement and oversight of legal acts.

### *Multilateral Treaties and EU Requirements on Anti-Monopoly Policies*

The Partnership and Cooperation Agreement between Armenia and the member states of the EU (entered into force on 1 July 1999) is one of the legal grounds for the protection of economic competition in the Republic of Armenia. The Partnership and Cooperation Agreement provides that the Armenian legislation must be harmonized with the EU legislation.<sup>46</sup> The anticipated legislative cooperation between the parties under the Agreement must also cover the protection of economic competition. The Partnership and Cooperation Agreement between Armenia and the EU member states can be considered one of the first steps towards Armenia's integration with the European structures.

On 25 January 2000, Armenia joined the Treaty on the Implementation of Consistent Policies against Monopolies, concluded among member states of the CIS. The goal of the Treaty is to create a legal and institutional framework for the implementation of consistent anti-monopoly policies and the promotion of competition by the contracting parties, as well as the elimination of factors negatively affecting trade and economic development, and the prevention of unacceptable practices harming the economic interests of the contracting parties, which are consequences of monopolistic conduct and unfair competition. An Inter-State Council on Anti-Monopoly Issues has been created for the implementation of the Treaty. The main goal of the Council is to define methods and criteria for evaluating monopoly practices and unfair competition, to introduce a procedure for investigating breaches of free competition, and defining rules and institutions for influencing government bodies and the economic entities violating the rules of competition in the commodity market, and agreeing upon them with the contracting parties.

The EU requirements in the field of implementation of policies against monopolies include the effective enforcement of competition rules, the prevention of anti-competitive agreements and the abuse of dominant position, concentration control, and the creation of a national authority for the protection of competition. The latter should have the powers necessary to review and examine anti-competitive practices, and to prevent and eliminate them through a variety of sanctions. National courts should play an important role in the protection of competition.

Under the EU legislation, policies of inspections, detection of violations, implementation of programs, and sanctions are essential to the implementation of anti-monopoly policies. During inspections, persons authorized by the European Commission may enter into the premises and business premises of economic entities and check documents related to their activities, regardless of where and how they are stored, as well as take copies of such documents, seize the place

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<sup>46</sup> Ruben Tumanyan, *The Legislative and Economic Grounds of the Protection of Economic Competition in the Republic of Armenia*, Armenia, *Finansner Yev Ekonomika*, #5, May 2008, p. 15.

of business and the documents during an inspection, and demand economic entities to provide clarifications on issues arising during the inspection.<sup>47</sup>

Under the EU legislation, leniency programs are important elements of the policy of detecting anti-competitive agreements, as such programs offer exemption or mitigation of the sanction to persons engaged in anti-competitive agreements, if they provide information about such agreements. This policy has proven its viability, because the international experience shows that the vast majority of anti-competitive agreements are detected with the help of leniency programs. Reality shows that even in developed countries, where the competition authorities are institutionally rather well-established, it is very hard to find hard evidence of anti-competitive agreements. Given the severe criminal sanctions for such agreements, a leniency program allows avoiding liability. The fear is connected with the fact that “whistle-blowing” is still unacceptable for the public at large in Armenia. The concern was that economic entities would not seek protection of their rights by the Commission in cases of anti-competitive practices, whereas the Commission is actually receiving a large number of complaints from economic entities. The international experience in this field has proven viable, as the vast majority of anti-competitive agreements are actually detected through this program.

In terms of ensuring proper exercise of its powers, the European Commission faces certain issues related to the granting of inspection powers and the development of a leniency program for detecting anti-competitive agreements.

The European Commission may sanction business entities in the amount of 1 percent of their previous year’s turnover, if they intentionally or negligently present incorrect information, fail to present information within the established time period, present incorrect information during inspections, provide wrong information during interviews, refuse to provide information on issues related to the case, or damage seizure seals. The European Commission may fine business entities violating the competition rules in an amount not exceeding 10 percent of their previous year’s turnover.<sup>48</sup>

For improving the competitiveness of the economy in light of the Lisbon Strategy, the EU pays close attention to the content of newly-adopted legal acts in terms of possible violations of competition rules therein. Furthermore, the European Commission has planned to screen the existing EU legislation in the context of protection of competition rules therein. To this end, a rather interesting requirement is contained in Article 27.1 of the Republic of Armenia Law on Legal Acts (“Article 27.1. Regulatory Impact Assessment of Legal Acts”) adopted in 2009. According to this Article, regulatory impact assessment is the analysis of changes possible as a result of adopting a normative legal act. The body drafting a legal act shall present the draft to the relevant bodies of national executive power (the “impact assessor”) for the purpose of conducting a mandatory assessment of the regulatory impact of administration-related costs arising

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47 Council Regulation of 16 December 2003 on the Implementation of the Rules on Competition laid down in Articles 81 and 82 of the EU Treaty.

48 Assessment of the Institutional Situation in the Fields of Competition and State Support, July 2007, AEPLAC (Armenian-European Policy and Legal Advice Center), p. 15.

ing for natural persons and legal entities in environmental protection, social, health care, economic (including small and medium-sized enterprise), competition, anti-corruption, and fiscal fields. After receiving the draft normative legal act, the impact assessor shall conduct the impact assessment and prepare a regulatory impact assessment report (hereinafter “the report”) thereon and present the report to the body drafting the legal act. The report shall contain:

- 1) The regulation results;
- 2) The results of the assessment on the relevant field in case the contemplated legal act is not adopted;
- 3) If, in the opinion of the impact assessor and based on the calculations and research made, the regulation option proposed is more favorable for the relevant field, then the option and the justifications thereof;
- 4) The timetable of assessing the consequences contemplated as a result of enforcing the normative legal act; and
- 5) Analysis of the relevant field policies and comparative statistics.

When presenting the draft normative legal act to the impact assessors, the drafting body shall organize public hearings of the draft with the aim of notifying natural persons and legal entities about the draft normative legal act, as well as collecting their opinions and further amending and revising the draft normative legal act based on such opinions.

An overview of the aforementioned provisions of Armenian laws, some of which were compared with relevant provisions of the laws of several EU member states, has shown that they were adopted in view of the phase of economic development in which the Republic of Armenia found itself back then, and which necessitated, among other issues, creating and consolidating the legal foundations necessary for effective protection of the domestic market and free competition. Moreover, the adoption of these laws allowed the government to take adequate measures when necessary to protect domestic producers in case of increased imports or dumping imports to the territory of the Republic of Armenia.

### *Evolution of Anti-Monopoly Policies in the Republic of Armenia*

The adoption and development of the anti-monopoly legislation of Armenia can be conditionally divided into the following three phases:

- A. Institutional and legal strengthening period: 2000 to 2007;
- B. Interim period for legal enforcement and reform: 2007 to 2011; and
- C. New period of legislative and administrative reform: from 2011 on.

#### *A. Institutional and Legal Strengthening Period: 2000 to 2007*

After the adoption of the Law at yearend 2000, the President of the Republic of Armenia created<sup>49</sup> the first State Commission for the Protection of Economic Competition under Article

<sup>49</sup> Republic of Armenia President Decree NH-786 dated 13 January 2001.

17 of the Law for the purpose of implementing government policies in the field of protection of economic competition.

The organizational structure of the Commission initially consisted of six units: the competition oversight department, the information department, the methodology and analysis department, the legal division, the accounting division, and the logistics division.

During this period, the Commission joined the CIS Inter-State Council on Anti-Monopoly Issues and the International Competition Network. On 15 and 16 October 2002, the 16<sup>th</sup> session of the Inter-State Council on Anti-Monopoly Issues was held in Yerevan.

As a result of the freedom-of-information award contest organized by the Center for the Freedom of Information, the Commission was recognized as the most transparent government agency of the Republic of Armenia in 2005 for the transparency and publicity of its activities and efforts to secure access to information.

During this period, the main concerns of the Commission had to do with collecting and processing information. The public and other government bodies provided little support to the performance of its functions by the competition authority.

### *B. Interim Period for Legal Enforcement and Reform: 2007 to 2011*

The Law was amended and supplemented in 2007. These were arguably the most significant amendments since the enactment of the Law, up to the reforms of 2011. The amendments conferred upon the Commission the authority to conduct inspections. However, due to a number of technical and other institutional gaps, it remained a *de-jure* function for some time. As a result of amendments to the Law, the Commission was conferred the power to oversee state support, too, sanctions were increased, and so on.

The National Security Strategy approved in 2007 by decree of the President of the Republic of Armenia rightfully mentions economic competition as a domestic threat for the country. The Strategy reads: “**Insufficient progress in creating a fair competition environment and managing natural monopolies, coupled with the large volume of the shadow economy and cash in circulation, are a potential threat for the country.** The Republic of Armenia strives to sustain high economic growth, whilst safeguarding the conditions necessary for liberal trade, small and medium-sized enterprise development, and the attraction and protection of investments.”<sup>50</sup>

The main structural units of the Commission are the staff departments for methodology and registry compilation, analysis, research and enforcement, legal and administrative proceedings, and international cooperation. During the latter part of this period, public and media attention in the Commission started to grow, and the work of the Commission was viewed as more urgent in light of sharp increases in the prices of essential commodities.

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50 Republic of Armenia President Decree NH-37-N dated 7 February 2007 “On Approving the National Security Strategy of the Republic of Armenia.”



### *C. New Period of Legislative and Administrative Reform: from 2011 on*

Attention in the activities of the State Commission peaked on the backdrop of issues raised by the media during the previous period and the conceptual and policy focus articulated by the governing circles. It was due to continuing inflation and the failure of some functions of government agencies (no price stability, various manifestations of the shadow economy, and lack of consumer protection). Improving the effectiveness of the protection of economic competition was expected to provide a solution to these problems. During this period, the reputation of the Commission improved as a direct result of more active engagement of the Commission by its newly-appointed leadership, leading, among other things, to a number of cases of heightened public interest.

Legislative amendments initiated by the Commission and implemented in 2011 with the World Bank's support were also aimed at improving the effectiveness of the Commission's performance. The amendments eliminated many of the loopholes in the Law and clarified key definitions. To bolster the efforts against price abuses by economic entities, the Law clearly regulated unjustified price increasing, lowering, and fixing. The amendments conferred the Commission additional tools for more effective controls of the competition environment in commodity markets and revealing business practices hindering economic competition. A number of amendments in the Law were aimed at strengthening the Commission's evidentiary capacity. The qualitative criterion for determining dominant position was introduced. The obligation to maintain a registry of entities having a dominant position was repealed. As a result of substantial legislative amendments adopted in March 2011, the Republic of Armenia Commission for the Protection of Economic Competition was conferred more powerful tools for fighting against anti-competitive market practices. The Law deferred to the Commission the power to set the declaration threshold for concentration cases. The Commission considerably lowered the threshold, immediately moving a large number of economic entities into the field of Commission-led administration. The Commission's performance outcome changed drastically as a result: the number of sanctioning decisions doubled, and the amount of fines increased five-fold. The optimistic expectation is that all these changes will soon create significant improvements and boost trust in anti-monopoly policies.

The Commission's current structure includes nine units, six of which are the following core functional departments:

- Research and enforcement;
- Methodology and registry compilation;
- Analysis;
- International cooperation;
- Legal and administrative proceedings; and
- Oversight.

The annual financing of the Commission can provide some information to understand changes in the Commission's institutional capacity over time. Drawing a parallel with the

corresponding figures on the Public Services Regulatory Commission (many of the functions and goals of these two commissions coincide), it is worth noting that the functions of the Public Services Regulatory Commission concern only business entities that have monopolistic or dominant position, and their conduct is or should be the subject of everyday focus by the State Commission for the Protection of Economic Competition. These entities are most probably also registered in the registry of the State Commission for the Protection of Economic Competition.

### *The Economic Competition Protection Model and the Development of a Competition Culture in Armenia*

As mentioned above, the Armenian law on the protection of economic competition is aimed at protecting and promoting free economic competition, safeguarding an environment necessary for fair competition, and facilitating enterprise development and consumer protection in the Republic of Armenia. The adoption of the Law essentially marked the inception of the practical mechanisms for fighting against anti-competitive abuse prohibited by the Constitution and the civil legislation, as well as the enforcement of sanctions.

According to the Law, a state body for protecting economic competition (the Commission) shall be created to implement government policies in the field of protecting economic competition.

The Commission has seven members, including the Chairman, appointed by the President of the Republic of Armenia for a five-year term.

*The mandate of the Commission includes:*

- a) Protection and promotion of economic competition for the purpose of enterprise development and consumer protection;
- b) Safeguarding an environment necessary for fair and free competition;
- c) Preventing, restricting, and warning against anti-competitive practices; and
- d) Oversight of the protection of economic competition.

*The Commission has the following main functions:*

- Conducting research in commodity markets, controlled purchases from economic entities, reviews, and inspections;
- Sanctioning economic entities and their officers, as well as government officials for violating the Law;
- Adopting relevant regulations on anti-competitive agreements, dominant positions, concentrations, unfair competition, state support, and determination of commodity markets;
  - Filing lawsuits in court claiming full or partial invalidation of acts adopted by government bodies or their officials, as well as contracts concluded between economic entities in violation of the law, and lawsuits claiming amendment or termination of such contracts; and
  - Filing motions with the Government to discontinue the actions or conduct of government bodies or their officials, which contradict the Law.

In the pursuit of its mandate and functions, the Commission shall be independent from other government bodies.

Every year, prior to 1 October, the Commission shall publish in the National Assembly its annual program of activities for the following year. The program shall contain brief information on the following:

- Analysis of the economic competition situation and identification of the existing problems;
- Measures for the protection of economic competition and the timetable of their implementation;
- Mechanisms for regulating economic competition; and
- Recommendations on improving the competition situation.

Every year, prior to 1 May, the Commission shall publish a report on its activities during the previous year, which shall contain, among other things:

- Analysis of commodities markets;
- Measures implemented in the area of regulation and oversight of economic competition; and
- A progress report on the implementation of recommendations on improving the competition situation.

It was initially planned that the Commission's program required by the Law would be approved by the National Assembly and, in case of the latter not approving the Program, the Commission would present its resignation to the President of the country. After amending the Law, the Commission itself approves its program and report, simply presenting the program before the National Assembly. These circumstances have apparently diminished the relevance of the program as a document on the implementation of competition policies and of the report as the main document for assessing the effectiveness of the performance of the competition authority, although recent legislative and administrative reforms have made the Commission's work rather active and public.

Many studies have shown that the adequacy of the capacity of the competition authority is not sufficient for creating an even field for competition within a country and effectively protecting competition. The issue is that certain government agencies at times take decisions or propose legislative packages that can seriously undermine competition. Hence, competition protection acquires nationwide importance. The public at large should be engaged in the competition advocacy process. The main goal is to provide the decision-making bodies of government a clear understanding of the competition rules and an appreciation of its importance. Besides administrative means, it can be achieved through training courses on the subject matter. The Commission has actually conducted training courses for journalists and the business community. However, they are not sufficient for developing an appreciation in the public of the importance of protecting competition. Thus, the competition culture is still inadequate in Armenia.

There is widespread poverty in Armenia. The more competition is restricted and the more preference is given to a small number of protégés, the smaller the likelihood of the benefits of growth reaching the public at large. In 2010, relative to 2008, the incidence and depth of poverty have grown. In 2010, over one third (35.8%) of the population were poor. Over one fifth (21.3%)

were very poor, and 3% were extremely poor. In two years, about 270,000 people became poor, as a consequence of which the total number of poor people reached about 1.2 million in 2010 (among the permanent population). During the same period, about 290,000 became very poor, and the number of the very poor reached 694,000. In a period of just two years, about 46,000 became extremely poor, and the total number of the extremely poor reached about 98,000 in 2010. As at 2010, there was not much of a difference between urban and rural poverty (35.7% and 36%, respectively).<sup>51</sup> International organizations, too, have confirmed the high incidence of poverty in Armenia: according to information from the International Monetary Fund (IMF), poverty in Armenia was 26.5% in 2006, 25% in 2007, 23.5% in 2008, 28.7% in 2009, and 34.1% in 2010.<sup>52</sup>

### 3.2 Assessment of the Competition Situation by International Organizations

The economic development trends of the Republic of Armenia provide economic indicators for assessing overall economic progress and the dynamics of competition. International organizations and various countries regularly publish reports that contain information on and assessments of the competition situation in Armenia.

#### *Indicators for Assessing the Competition Environment*

The assessment of the competition environment and the implementation of effective government economic policies against monopolies on the basis of the assessment results are contingent upon the attainment of a number of economic targets, such as corporate governance, structure and institutional reforms, price liberalization, and elimination of obstacles to free enterprise development.

Corporate governance is currently problematic in Armenia: the relevant laws, regulations, and institutions are rather weak. In terms of key aspects of transparency, such as the publicity of the enterprise register and access to information on founder and shareholders, Armenia is among the worst performing among CIS countries. Inadequate development of corporate governance functions strengthens the dominant position of a small number of entrepreneurs and undermines trust among investors. Competition-related negative practices, such as agreements between entrepreneurs and mutual commitments resulting from collusion, seriously impede the market entry of new participants for both foreign and local investors.

The experience of Central Europe and the Baltic states shows that growth can be sustained through factors such as fundamental structural and institutional reforms aimed at creating an environment for competition in the economy. The sharp contraction of the economy due to the

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51 Part 1. Armenia: global economic crisis and poverty profile, labor market development in 2008–2010, National Statistical Service of the Republic of Armenia, [www.armstat.am/file/article/poverty\\_2011a\\_2.pdf](http://www.armstat.am/file/article/poverty_2011a_2.pdf), page 34.

52 Table 1. Armenia: Selected Economic and Financial Indicators, 2006–13, Republic of Armenia: Second Reviews Under the Extended Fund Facility and Extended Credit Facility, and Request for Modification of Performance Criteria—Staff Report; 2011 International Monetary Fund, page 15.

global crisis, which followed a period of strong economic growth, reduced the number of jobs. Failures of private investments are mostly a consequence of the large shadow economy and the continuing monopolistic positions in the production and distribution sectors.

### *International Monetary Fund (IMF)*

Media publications show that the IMF shared the view of the World Bank on monopolies in Armenia: the IMF Representative stated that the Armenian economy is controlled by monopolies and other oligopolistic structures that hamper the country's development. She agreed with the statement by the World Bank representative about Armenia failing to succeed so long as the most profitable sectors of the economy are controlled by entrepreneurs that are linked with the government.<sup>53</sup>

The competition terms are not even especially in trade and distribution, where monopolistic earnings are derived and the public are forced to suffer certain losses at the expense of their well-being.

According to information published by the IMF, the introduction of an electronic registration system is considered an improvement in the business environment in the context of structural reforms in the Armenian economy, as it has considerably reduced enterprise registration time and costs. The number of licenses required for the registration of various enterprises has been reduced effective from January. Measures have been implemented to simplify the certificate-of-origin requirements and to reduce the time required for customs clearance of goods crossing the border. A number of key amendments have been made to the competition protection law to augment the role and authority of the Commission, to widen the scope of its inspection powers, to improve the methodologies, and to increase the fines for monopolies.<sup>54</sup> Moreover, according to the press release on the legal amendments, "the structural agenda continues to progress, with signs of improvement in the business environment mainly in the area of inspection, competition legislation, business registration processes, and VAT refunds."<sup>55</sup>

### *The World Economic Forum*

According to the Global Competitiveness Report of the World Economic Forum, Armenia is falling behind many of the Eastern European and CIS states. In 2010, Armenia was ranked as 98 among 139 countries, ahead only of Tajikistan and Kyrgyzstan.<sup>56</sup> According to research conducted in 2011 and 2012 into a number of economic indicators, the Global Competitiveness Index of the Republic of Armenia was 3.9, placing it as the 92<sup>nd</sup> among 142 countries surveyed.<sup>57</sup>

53 IMF Shares World Bank Concern About Monopolies In Armenia , Thursday, May 17, 2012 , Radio Free Europe, Radio Liberty, [www.rferl.org/content/IMF\\_Shares\\_World\\_Bank\\_Concern\\_About\\_Monopolies\\_In\\_Armenia/1871216.html](http://www.rferl.org/content/IMF_Shares_World_Bank_Concern_About_Monopolies_In_Armenia/1871216.html)

54 IMF Country Report No. 11/178, July 2011, Washington, D.C. 20431, page 31.

55 Press release number 11/344, for immediate release, IMF Washington, DC, 20431, USA, 22 September 2011, p. 2.

56 Armenia: An Assessment of the Real Exchange Rate and Competitiveness, Anke Weber and Chunfang Yang, 2011 International Monetary Fund, p. 8, Table 2.

57 The Global Competitiveness Report 2011–2012, Editor Professor Klaus Schwab, World Economic Forum, Geneva, Switzerland 2011.

To compare with the neighboring countries in the region, Armenia is lagging far behind them. The figure for Azerbaijan was 4.31, ranking 55<sup>th</sup>, while Georgia ranked 88<sup>th</sup> with a ratio of 3.95. As to the larger regional neighbors, Iran ranked 62<sup>nd</sup> with a ratio of 4.26, and Turkey was 59<sup>th</sup> with a ratio of 4.28.

- 1) In terms of the assessment of the effectiveness of anti-monopoly policies (i.e. the extent to which policies implemented in Armenia against monopolies help to develop competition, on a scale of 7, where 7 is the most effective, and 1 is ineffective), Armenia had a ratio of 2.8, ranking 138<sup>th</sup>. Neighboring countries had a relatively higher effectiveness: Azerbaijan ranked 113<sup>th</sup> with a ratio of 3.3 and Georgia 135<sup>th</sup> with 2.9.
- 2) In terms of local competitiveness, Armenia ranked 139<sup>th</sup> (with a ratio of 3.4), while neighboring Georgia ranked 128<sup>th</sup> (with 3.9) and Azerbaijan 133<sup>rd</sup> (with 3.8).
- 3) In terms of the Internal Market Size Index (GDP plus imports of goods and services minus exports of goods and services), Armenia ranked 110<sup>th</sup> (2.5), again falling behind the neighbors: Azerbaijan was 80<sup>th</sup> (3.2) and Georgia 102<sup>nd</sup> (2.7).

Among 142 countries surveyed on the basis of the same data sources and other assessment indicators that directly or indirectly affect economic competition and anti-monopoly policies in the country, Armenia lagged behind many others in terms of various indicators. Armenia ranked 95<sup>th</sup> in terms of the protection of property rights, 96<sup>th</sup> in terms of the protection of intellectual property rights, 97<sup>th</sup> in terms of bribes (including bribes paid during imports, exports, government contracting during public procurement, annual payment of taxes, or utility payments), 108<sup>th</sup> in terms of judicial independence, 83<sup>rd</sup> (2.4) in terms of public trust in the ethical standards of politicians, 81<sup>st</sup> (3.4) in terms of effective legal remedies for disputes related to private business, 105<sup>th</sup> (3.5) in terms of reliability of police services, 115<sup>th</sup> (4.1) in terms of the effectiveness of corporate governance, and 120<sup>th</sup> (3.5) in terms of the protection of the rights of minority shareholders.

### *European Bank for Reconstruction and Development*

According to the EBRD's 2011 assessment of Structural and Institutional Change Indicators concerning Armenia, structural and institutional progress has not been reported in Armenia in the preceding years. On the contrary, Armenia's performance deteriorated by 0.10 points<sup>58</sup> to 3.8, lagging behind countries like Albania, Macedonia, Turkey, and Slovenia. The deterioration of Armenia's index had to do with the falling "index of price liberalization" (revised downwards from 4.33 to 4.00), which, in the opinion of the EBRD's experts, was due to the fact that, during 2010 and 2011, Armenia applied some administrative regulations in relation to prices of essential commodities. In terms of the reform progress in specific sectors of the economy, Armenia presently corresponds to the developed market economy standards in the field of foreign trade and currency policies. Moreover, Armenia is still slow in the following areas: Governance and Enterprise Restructuring (falling behind virtually all the other countries of Eastern Europe with a ratio of 2.33), Compe-

tition Policy (falling behind virtually all the other countries of Eastern Europe with a ratio of 2.33), Financial Sector (falling behind virtually all the other countries of Eastern Europe with a ratio of 1.93), Infrastructure and Corporate Sector reform (falling behind virtually all the other countries of Eastern Europe with ratios of 2.50 and 2.84, respectively). We can conclude based on the foregoing that Armenia's competition framework still lags behind in terms of its development trends, which is an indication of a key problem in this sector of the economy still remaining unsolved.

### *Index Mundi*

Index Mundi, an international rating organization, stated that monopolies are a vulnerability of the Armenian economy.<sup>59</sup>

### *Assessment of the European Commission*

In the Neighborhood Policy implementation progress report on Armenia, the European Commission mentioned that competition development should be facilitated in order to promote local markets. Although the Government has adopted a number of measures in this area, stronger efforts are required to promote export diversification and to create an environment for more open and transparent trade.<sup>60</sup>

### *Armenia National Competitiveness Report*

Anti-monopoly policy implementation effectiveness assessment indicators are also contained in the Armenia National Competitiveness Report. In terms of the local competitiveness index, Armenia fell by 28 ranks to 139<sup>th</sup>. In terms of anti-monopoly policy implementation, too, Armenia fell by 30 points to 138<sup>th</sup>. In terms of market domination, Armenia fell by 22 points to 133<sup>rd</sup>.<sup>61</sup>

A competitive environment is a precondition of effective markets and a driving force of enterprise development. Enterprises believe that the competition promotion and government anti-monopoly policy situation is not favorable for business and is a key weakness.

The survey of entrepreneurs in the framework of the competitiveness study found a deterioration of the environment after 2005 relative to other countries. Similar developments occurred in Georgia and Azerbaijan in this field.

The more intensive the competition in this area, the greater the effectiveness of companies.

59 Armenia Economy Profile 2012, [http://www.indexmundi.com/armenia/economy\\_profile.html](http://www.indexmundi.com/armenia/economy_profile.html)

60 Joint Staff Working Paper, Implementation of the European Neighbourhood Policy in 2010, Country report: Armenia, European Commission, Brussels, 25/05/2011, SEC(2011) 639, pp. 7-8, 10.

61 Tables 3-7: Armenia National Competitiveness Report, Governance Practice Improvement Agenda, 2011/2012, p. 43.

## 4. Competition Protection Policies in Armenia: Impact and Market Situation

### 4.1 The Activities and Reports of the State Commission for the Protection of Economic Competition

#### 4.2 Market Situation: Overview and Analysis of Specific Markets

### 4.1 The Activities and Reports of the State Commission for the Protection of Economic Competition

The annual programs and reports required by the Law and published by the Commission provide adequate information about the activities of the Commission. In addition to the assessments of international organizations and the perceptions of the business community and consumers, these documents provide more or less comprehensive information about the competition situation and markets in Armenia.

In its 2011 Annual Program of Activities, the Commission noted: "... the commodity markets examined mostly have high and medium concentration; markets with low concentration are rare."

Trends of certain indicators characterizing the competitive situation in a number of commodity markets examined in the past are presented below.

Table 2. Trends of Certain Indicators of Competition in Commodity Markets

Commodity Market	Number of Participants in the Commodity Market		Concentration in Commodity Markets			
	Previous study	Recent study	Percent		Extent	
			Previous study	Recent study	Previous study	Recent study
1 Wheat flour	43	51	78.9	87.6	High	High
2 Sugar	21	6	99.9	100.0	High	High
3 Butter	23	20	84.1	67.6	High	Medium
4 Chicken eggs in the shell	12	6	85.9	80.6	High	High
5 Frozen fish	11	20	72.3	62.3	High	Medium
6 Rice	19	28	66.6	62.8	Medium	Medium
7 Unused tires of passenger cars	60	36	46.6	66.7	Medium	Medium
8 Gasoline	7	5	89.9	93.9	High	High
9 Diesel fuel	11	7	76.3	95.1	High	High
Total number of competitors in commodity markets	207	179				

Source: 2011 Annual Program of Activities of the Commission, p. 8

The table above reflects a decrease in the number of market participants, especially in markets of sugar, butter, chicken eggs, car tires, and fuel. The total number of participants in all the commodity markets was 207 according to the previous study, falling to 179 according to the 2011 study. Considering that these commodity markets include also the so-called "systemic" commodity markets or the markets that influence all the sectors of the economy to one extent or another (such as gasoline and diesel fuel), as well as the essential foodstuffs, one can conclude that the competition situation is far from being adequate.



As mentioned above, 2011 was really a turning point in the activities of the Commission, as it embarked upon a qualitatively new phase. After the amendments to the Law enter into effect, the human resource, structural, and performance improvement reforms that had begun a year earlier directly influenced the performance indicators of the Commission. Some indicators of the Commission's performance are briefly presented below.

Table 3. Information on Sanctions Enforced by the Commission

	2008	2009	2010	2011
Sanctioning decisions (number of decisions)	31	31	107	197
Fines imposed (million drams)	9	10 <sup>62</sup>	37	351

In 2011, compared with the years before, the number of cases of concentration of economic entities increased sharply. In terms of the Commission's performance during 2008 to 2011, it is clear that the Commission took 31 decisions to sanction economic entities in 2008 and 197 in 2011. As to the amounts of fines imposed, they reached 351 million drams in 2011 alone for anti-competitive practices, of which 220 million were actually paid to the state budget during the year. Furthermore, the fines imposed in some cases are not compatible with the scale of turnover of entities fined: much larger fines could be imposed on large companies that have a dominant position in an economic sector, and the amount would be negligible relative to its economic power and earnings, or not a very large fine could be imposed on a company for which the fine would be rather significant given its turnover and earnings, and more damage would thus be done to smaller entities. However, fiscal indicators alone cannot present the real picture of the effectiveness of the performance of the competition authorities.

The 2011 report of the Commission shows that it carried out a lot of work in respect of its various functions. However, contrary to earlier annual reports, the 2011 report does not contain an assessment of competition policies implemented and the impact of administration or the current situation in various markets. In 2011, for instance, a survey was conducted in about 20 markets of foodstuff and non-foodstuff commodities, including commodity markets such as sugar, eggs, wheat flour, nitrogen fertilizers (ammonium saltpeter), gasoline, and diesel fuel. However, it does not describe the situation in relevant markets in the year or assess concentration or trends of key indicators relative to the previous years, unlike the reports for 2008 or 2007. Previous annual reports of the Commission at times contained some analysis of the economic and competition policies, as well, which was absent in subsequent years.<sup>63</sup> Nonethe-

62 As a result of surveys in the drugs market at yearend, the Commission decided to sanction seven business entities for engaging in anti-competitive practices for a total sum of around 500 million Armenian drams. However, after the Commission Chairman resigned, the decision was repealed.

63 For instance, the 2004 Annual Program of Activities of the Commission reads: "... Moreover, Armenian products are not competitive in commodity markets in which competition is not sufficiently developed. Such commodities are produced in large-scale industries that take up a large share of the country's economy, and their fixed assets are considerably worn out. To overcome this situation and to become competitive in the international markets, significant investments are necessary. The current level of investments is not sufficient. The lending policies of banks are another reason for the lack of modernization and renewal of technical assets in these sectors of production. Loans with a longer buyback term

less, we believe that such reports should provide stimuli for policy making, administration, and institutional work by other governmental agencies responsible for the financial and economic sectors. Moreover, as mentioned above, the Law provides that the Commission's mandate is to protect and promote economic competition for *the development of entrepreneurship* and the *creation of an environment necessary for fair and free competition*. To carry out this mandate, the Commission performs functions such as *contributing to the development of economic competition* and the drafting of legal acts regulating government policies in this area, their presentation in accordance with the established procedure, *collaboration with government agencies*, and concluding memoranda and other cooperation agreements with them on matters pertaining to the Commission's mandate. The appreciation of the dram and excessive prices are also consequences of high concentration in the Armenian economy and the desire of importers to retain the high level of their earnings. This reality is confirmed further by the involvement of government officials in the import business. Another reason is the monetary policy implemented by the Central Bank, which fails to contain high inflation and *does not contribute to economic growth*. The current social and economic situation shows that macroeconomic regulation alone is not realistically sufficient for attaining economic growth. Economic competition and the competitive environment are such delicate and multi-layered phenomena that one-sided activities of a single agency cannot deliver results, especially if government agencies responsible for the economy, monetary policy, and public procurements fail to combine efforts for delivering a favorable environment for competition; without strong will to fight against the shadow economy, enormous efforts of the Commission and the resources invested by the government in this agency will be simply diluted. The banking sector, which is presently a rather influential component of Armenia's financial system, still overlooks the goals and interests of the other components of the financial system, limiting the potential for development of these markets through competition and eventually restricting the outreach of the banking system.<sup>64</sup>

An overview of the Commission's annual reports for different years allows identifying a trend: earlier on, the Commission's survey activities focused on the markets for relatively more aggregated commodity groups, but over time, the Commission began to target specific commodity markets (such as the current focus on Instant Coffee, Coffee Beans, and Ground Coffee commodity markets, which were previously viewed as a single commodity market of Coffee; the same holds true for the earlier focus on a single commodity market for Drugs, which has now been replaced with commodity markets of drugs of various categories and uses). 2010

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are needed to finance investments, but they are practically not available. Furthermore, the maximum amount of loans offered is not sufficient for purchasing modern technologies and equipment, because of which businesses have to purchase less-than-contemporary hardware. According to the Central Bank's report, bank lending to the economy grew by only 2.6 percent in 2002. Banking sector credit to the real sector of the economy is not compatible with the pace of economic growth, and the banking sector is a passive participant in the economic development process.

(<http://www.competition.am/uploads/resources/ARMPProgram2004.pdf>)

64 Position of the ARF Parliamentary Faction on the socio-economic policy implemented by the Republic of Armenia Government and the 2012 State Budget, 7 December 2011.

and earlier annual reports reflect the physical volume of markets for specific commodities, whereas in 2011, the report no longer contained such indicators. This change may be due to a number of circumstances: based on the previous experience, the persons making calculations may have simply realized that the market volume often cannot be correctly estimated (due to a number of reasons such as the shadow turnover and problems of methodology and information consistency) and avoided estimating the volume of the commodity market. Alternatively, given the peculiarities of the surveyed markets, it may have been considered inappropriate to present their physical volumes.

Despite significant progress in terms of the information collected and processed for the functioning of the competition authority, major problems still remain in respect of the structured and streamlined collection and processing of sector-specific compatible information and the performance of analysis on its basis.

## 4.2 Market Situation: Overview and Analysis of Specific Markets

The absence of a fair and competitive environment in various sectors of the economy including the markets for essential commodities such as sugar, wheat, and fuel imports are widely perceived as a most fundamental challenge for the Armenian economy. The dominant position of certain business circles in this sector is attributed to their close personal ties with high-level government officials. Furthermore, the Government is taking measures to strengthen the institutional capacity of the Republic of Armenia State Commission for the Protection of Economic Competition. However, these efforts will be doomed to fail, unless the problem of shadow economy — a key factor hampering the competition framework — has been addressed. The Commission, however, has no power to fight against the shadow economy. Besides, the existence of informal “rules of the game” simply do not allow the Commission to function effectively, as illustrated by the campaign launched by the Commission in 2009 against anti-competitive collusions in the market for drugs, which resulted in the imposition of sanctions upon seven of the largest economic entities — an unprecedented phenomenon in the Commission’s history. However, not long thereafter, in 2010, the new leadership of the Commission annulled the decision rendered by their predecessors.<sup>65</sup> The existence of a large shadow economy causes the market to be underrepresented and creates advantageous conditions for a few selected economic entities.

### *Market Concentration and Economic Entities with a Dominant Position*

The table below shows the number of Commission-registered entities having a dominant position in the period in question, and the number of commodity (service) markets in which such entities operated.

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<sup>65</sup> Armenia 2008: A Year of Uncertainty, pp. 67-68, Civilitas Foundation, Yerevan. Armenia 2010: A Year of Uncertainty, p. 63, Civilitas Foundation, Yerevan.

Clearly, the number of markets “overburdened” with dominant economic entities is larger than the number of entities having a dominant position. The reason is the fact that **an economic entity often has a dominant position in more than one commodity markets concurrently.**

Table 4. Number of Entities Having a Dominant Position and Number of Relevant Commodity Markets

Year	Economic Entities Having a Dominant Position	Commodity Markets in Which Economic Entities Have a Dominant Position
Registered in 2002	21	
Registered in 2003	10	14
Registered in 2004	12	38
Registered in 2005	23	
As at 1 July 2006	42	65
As at 1 January 2007	60	84
As at 1 January 2008	71	92
As at 1 January 2009	78	

The legislative amendments of 2011 eliminated the requirement to file a centralized registry of economic entities having a dominant position. Nevertheless, it is believed that the competition authority should continue somehow recording and classifying entities having a dominant position so that it can monitor their conduct and economic performance indicators. The next table shows the main categories of commodity markets surveyed by the Commission.

A concentration is a merger, association, or acquisition of assets or shares of economic entities. A market is considered to have a high degree of concentration, if the share of the largest three economic entities in total market sales is from 70 to 100 percent. A market is considered to have medium concentration, if such share is 45 to 70 percent and low concentration if it is below 45 percent.

The market situation presented here as at 2004, 2007, and 2011 is rather consistent with the three phases of development of the anti-monopoly legislation of Armenia presented earlier. However, market concentration has not changed considerably during any of these phases: the number of markets with low concentration remained rather small, while the number of markets with high concentration remained steady. During the period in question, low concentration was observed in only 10 (6.3 percent) of the 158 markets surveyed. In contrast, over 66 percent of the observed markets had high concentration. As the table illustrates, there is absolute concentration (100 percent) in the surveyed markets of *natural monopolies*, *transport and communications*, *tobacco*, and *vehicles*. These markets were followed by other high-concentration markets such as *foodstuffs* and *fuel* markets.

Table 5. Main Categories of Commodity Markets

TOTAL NUMBER OF MARKETS (ECONOMIC ENTITIES <sup>66</sup> ) SURVEYED	Concentration	2004	2007	2011
		<b>46 (1,184)</b>	<b>93 (1,971)</b>	<b>19 (248)</b>
Of which, in %	High	67.4	61.3	89.5
	Medium	21.7	33.3	10.5
	Low	10.9	5.4	0
Sector Groupings of Markets				
	100%	<b>15 (505)</b>	<b>33 (850)</b>	<b>13 (209)</b>
FOODSTUFFS markets	High	66.7	69.7	92.3
	Medium	13.3	24.2	7.7
	Low	20	6	
		<b>4 (50)</b>	<b>4 (19)</b>	-
FUEL markets	High	75	75	
	Medium	25	25	
	Low			
		<b>4 (89)</b>	<b>6 (140)</b>	-
BEVERAGE markets	High	75	50	
	Medium	25	33.3	
	Low		16.6	
		<b>7 (352)</b>	<b>5 (225)</b>	-
HOUSEHOLD ITEMS markets	High	14.3	20	
	Medium	57.1	80	
	Low	28.5		
		<b>7 (162)</b>	<b>6 (70)</b>	<b>4 (25)</b>
CONSTRUCTION MATERIALS markets	High	71.4	66.7	75
	Medium	28.6	33.3	25
	Low			
		<b>2 (19)</b>	<b>2 (19)</b>	-
TOBACCO markets	High	100	100	
	Medium			
	Low			
		<b>3 (3)</b>	<b>5 (5)</b>	-
TRANSPORT (COMMUNICATIONS) markets	High	100	100	
	Medium			
	Low			
		-	<b>6 (10)</b>	<b>1 (3)</b>
NATURAL MONOPOLIES markets	High		100	100
	Medium			
	Low			
		-	<b>3 (136)</b>	-
VEHICLES markets	High		100	
	Medium			
	Low			
		-	<b>10 (260)</b>	-
DRUGS markets	High			
	Medium		100	
	Low			
		-	<b>5 (184)</b>	-
HOUSEHOLD ELECTRONICS markets	High		40	
	Medium		60	
	Low			
		<b>4 (4)</b>	<b>8 (53)</b>	<b>1 (11)</b>
OTHER markets	High	100	62.5	100
	Medium		12.5	
	Low		25	

66 In some cases, the same economic entity operates in several commodity markets: in these cases, the economic entities reoccur when the competition authority surveys a market in as much detail as possible. For instance, the economic entities

### *Natural Monopolies*

There is no market of natural monopolies *per se*. Services delivered and goods sold by natural monopolies are essentially priced as a result of “negotiations” between the monopolist and the Public Services Regulatory Commission of the Republic of Armenia, which lays fertile “moral” ground for *subsequently creating a particular situation* in the market or rather in the economy. Considering that natural monopolies are normally a stable systemic factor that adds value in virtually any sector of the economy, it is possible to imagine the costs to the consumers and the national economy of the situation in the natural gas supply and infrastructure installation, water supply and infrastructure installation, power supply and infrastructure installation, and railway systems because of their inefficient performance and poor government controls of their activities. The situation could certainly be worse, and it is undeniable that such systems and numerous professionals working therein play a very important role for the economy and for security. However, considering the significance of natural monopolies for the national economy, it is more important to focus on the shortcomings of natural monopolies. An oft-cited example is the impact of the market entry of the second and subsequently third mobile phone and Internet operators on the communication, accessibility, and prices of telecommunications. However, tariffs and losses are increasing in the gas, water, and electricity sector without taking into account the ability of consumers to pay. Although the companies operating in the aforementioned natural monopoly sectors are top corporations of Armenia, which are in the list of large taxpayers, they and their satellite companies have, parallel to the prices of their actual services and products, informal payments systems and corrupt deals that are mostly due to their monopolistic positions. Government agencies and society are convinced that the natural monopolies have low efficiency, high losses, and uncontrolled costs. In the case of Armenia’s natural monopolies, the economy of scale looks more like an inefficiency of scale.

**ARMRUSGASPROM:** for several years now, discussions of the quality (energy content) of gas supplied to households have not subsided among consumers, businesses, the mass media, and government agencies. Problems related to gas quality and the calculation of service fees exist in respect of gas supplies to businesses for industrial purposes. AEG Service, which is essentially a monopolistic company artificially created in this sector, lies practically out of both market control and oversight by the Public Services Regulatory Commission and the Commission for the Protection of Economic Competition. Problems related to gas supplies and consumption are mostly related to gas quality and the credibility of expert examinations of meters, the justification of tariffs set, the unpredictability of tariff policies, and the price-quality uncertainty. The gas sector expert examination laboratories are within the same system and also have monopolistic positions; they are essentially “providing grist for the mill of gas supplier and

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operating in the Analgesics market normally also operate in other drug markets. The same holds true for economic entities operating in the markets for different household electronics, which are parts of the aggregated Household Electronics category.

service provider companies.”<sup>67</sup> These issues and the uncertainty problems make it difficult, at least in terms of household heating, for the consumers to make a choice between electricity and gas, which, too, violates the rights of consumers. There are also problems related to the costing of maintenance services, the methodology for setting unreasonably high service fees, and costs attributed to subscribers that are absent from the country.

**Electricity Networks of Armenia, Yerevan Water Company, Armenia Water and Sewerage Company, and the South Caucasus Railway:** These companies are largely managed inefficiently, while enjoying the benefits of a monopolistic position. Even though their tariffs are influenced to a large extent by their investment estimates, natural monopolies fail to implement the investment commitments assumed under privatization or concession contracts, which in turn is due to the inefficiency of government agencies and weak public oversight. These sectors have not benefited from serious investment projects or any visible modernization of the infrastructure. Rather, transportation remains a key impediment to the competitiveness of the Armenian economy, capital investments in power distribution are limited to the maintenance or repairs of the existing fixed assets, and water supply infrastructure is rehabilitated or expanded using grants or private finance, failing to solve the water problem nationwide. Problems of electricity and water supply in the rural communities, which often differ substantially from the problems encountered in the capital city, receive practically no attention from the executive power for years. Investments made by regional households for shifting to gas-based heating (acquisition and installation of household heaters, boilers, and radiators) have been diluted in the last year or two, as vast numbers of these households are shifting to wood stoves for heating.

To conclude, the “public hazard” of natural monopolies is due to the following factors:

- a) Compensation of losses and governance inefficiencies at the expense of tariffs;
- b) Frequent failure to make the required investments (in breach of privatization or concession contracts);
- c) Accounting for a large share of the minimum consumer basket, which strikes a heavy financial blow upon socially-vulnerable households;
- d) Tariffs considerably affecting costs in various sectors of the economy; and
- e) Infrastructures being outdated and worn out (failure to update and modernize the infrastructures and hardware, operating them “during the period between repairs”).

### *Import Monopolies*

In the context of liberalized international trade, a country as small as Armenia cannot afford any import-related monopoly. The existence of a monopolistic situation related to imports (especially monopolies in specific sectors of the economy or monopolies that decisively influ-

<sup>67</sup> A widespread recent practice is that of the gas utility company staff removing gas meters for examinations without giving prior notice to the subscribers, after which they extort large amounts from the consumers through fabricated accusations of “external interference,” “internal interference,” or other pretexts.

ence food security) is a sufficient basis for engaging government regulation. One might even claim that import monopolies hinder or even preclude development of economic sectors, as imports make up three quarters of the Armenian economy. 42.4 percent of the sector markets observed during the time periods in question is controlled by import monopolies, i.e. 67 of the 158 markets either are absolute-monopoly importers or are dominated by importer companies. Import monopolies account for 44.3 percent of the foodstuffs markets and 83.3 percent of the markets for household items. However, it should be noted that the problem of import monopolies is older and more severe than the problem of other monopolies and the competition legislation. The roots of import monopolies date back to the 1990s: since then, the economic policy makers of Armenia have failed to articulate Armenia's economic policies, including their objectives, principles, and long-term goals. This is a serious omission that has objective and many subjective reasons. Unfortunately, the war, the rapid privatization, political and virtually permanent fiscal tension, and political and executive populism have not allowed the authorities to articulate a genuine long-term economic agenda. As economics doctor, professor R. Sarinyan said, "the formation of a national economy is a process of conceptions, a quest for identity and new solutions, which will still require much time. However, today's solutions will determine the future profile of the national economy... After all, economic freedoms should be based on a national ideology."<sup>68</sup> Indeed, "much time" is needed, but unfortunately, since the country gained independence, significant changes have not occurred in either the structure of the economy or the principles of governance or the indicators of economic competition.

The negative consequences of import monopolies for the economy are not limited to monopolistic prices. According to the findings of the Survey of Documentation Problems in the Armenian Economy, "places of performing trade" are the main source of undocumented procurements in the Armenian economy, followed by direct importers that carry out centralized and/or mobile sales and distribution through supply or distribution networks. The shadow turnover of these two sources accounts for 82 percent of the total volume of undocumented transactions in Armenia's economy.<sup>69</sup> Most of the economic operations related to the purchasing of goods and services are performed by companies and sole entrepreneurs without any documentation, which is due to the following main reasons:

- *Being forced* to operate in the shadow economy: there are certain widespread commodities in the economy, which can be purchased either without a document or with partial documentation (*this reality is imposed by monopolies and oligopolies importing goods of general consumption*). As a result, economic entities processing and reselling the products are overburdened with taxes and in turn try to conceal that part of their turnover (*otherwise, they might have a shortage by selling products that they do not have*);

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68 R. Sarinyan, *Theory of Modern Armenian Economics*, Volume 1, Yerevan 2003.

69 [www.taxservice.am](http://www.taxservice.am), *Survey of Documentation Problems in the Armenian Economy*, p. 25.



- Uneven competition, which is manifested in the fact that some economic sectors are overburdened with competition, where even a 1 percent fluctuation in the supply price is sufficient for an economic entity to be ousted from the market in a short period of time, and economic entities that can somehow avoid full payment of taxes eventually drive honest businesses out of the sector, and most of these honest businesses are SMEs.<sup>70</sup>

To conclude, the “public harm” of import monopolies is demonstrated in the following ways:

- a) Few jobs;<sup>71</sup>
- b) Virtually no investments;
- c) Lack of technological progress and modernization;
- d) Creation of extremely small added value;
- e) Shortcomings in the documentation of the purchase and sale chain, which distort the market picture and further increase the size of the shadow economy;
- f) Abuse of currency exchange rate fluctuations (sometimes even artificial inducement of such fluctuations) for extraction of additional earnings;<sup>72</sup>
- g) Accounting for a large share of the minimum consumer basket, which strikes a heavy blow upon the socially-vulnerable population; and
- h) The Armenian public are generally not familiar with the image of the importer businessman, and importers are the most passive in charity and civil society initiatives.

**Sugar market:** The granulated sugar (sugar) market can rightfully be considered the most famous monopoly in Armenia. It is a fact of common knowledge among academic economists, bankers, shopkeepers, and housewives alike. The economic entity controlling this monopoly, albeit using different names, has obviously had an absolutely dominant position since the introduction of the legislation on economic competition. Even the fuel market is less concentrated than the sugar market. The key indicators of the market during the period from 2001 to 2011 are presented below. During 2001–2003, the sugar market monopolist controlled 79–95 percent of the market, while two dozen entities operated in the market. However, starting from 2004, the monopoly has constantly controlled over 90 percent of the market, reaching 99.9 percent in 2011.

During 2003–2011, certain changes occurred in the structure of the main markets (countries) supplying sugar to Armenia: while during 2003–2005, the bulk of the sugar was supplied from Great Britain and from Georgia during 2006–2007, Brazil became the main source of sugar imports to Armenia in 2009. During the period in question, average profitability of the granulated sugar market was 238 percent. In some years, it was close to three-fold, reaching 269 percent in 2006 and 294 percent in 2010. Profitability was calculated by comparing the sales price (average price of the respective year in Yerevan) to the average value of imports

70 Ibid, p. 86.

71 Karen Vardanyan, FOREIGN-TO-ARMENIAN: 82 TO 18, Golos Armenii, Tuesday, 2 November 2010, number 117.

72 Analysis of Change Trends in Essential Foodstuffs Prices in Armenia, Yerevan 2010, March–June, Consumer Rights Protection NGO, OXFAM.

during the respective year. This figure is believed to provide a rather accurate assessment of de-facto profitability, because companies importing to Armenia normally do not have major costs that would affect cost, and because the wholesale and retail prices of granulated sugar do not vary much given that the sugar market monopolist (or entities affiliated with it) are also dominant entities in the retail network through the Kaiser and Yerevan City supermarket chains. In view of this fact, the importer's wholesale prices are virtually no different from the retail prices marked in the aforementioned supermarkets. The situation is further exacerbated by the documentation problems described above.

Table 6. Key Indicators of the Market, 2001 to 2011

Year	Concentration	Number of Economic Entities	Economic Entity Having a Dominant Position	Retail Price in Armenia, in AMD	Armenia Price Increase/Decrease over the Previous Year, in %	Global Price Increase/Decrease over the Previous Year, in %*	AMD to USD	Retail Price in Armenia, in USD
2011	High	5	Lusastgh Sugar: 99.0	432.8	125.1	109.9	372.5	1.16
2010	High		Alex Grig LLC: 77.5	346.0	114.4	111.8	373.6	0.93
2009	High	6	Alex Grig LLC: 99.9	302.5	123.2	151.5	363.3	0.83
2008	High	21	Salex Group LLC: 91.4	245.4	96.2	116.6	306	0.80
2007				255.2	79.6	64.3	342.1	0.75
2006	High	21	Salex Group LLC: 91.4	320.4	129.6	144.8	416	0.77
2005	High	21	Salex Group LLC: 91,4	247.2	96.3	94.8	457.7	0.54
2004	High	23	Fleetfood LLC: 99.4	256.7	97.6	93.0	533.4	0.48
2003	High	7	Astghatsolk LLC: 81.6%	262.9	101.9	131.8	578.8	0.45
2002	High	11	Astghatsolk LLC: 94.8%	257.9	99.4	79.9		
2001	High	9	Astghatsolk LLC: 79.8%	259.4	112.7	111.6		

Source: Republic of Armenia State Commission for the Protection of Economic Competition and National Statistical Service, Commodity Group Composition in FAO Price Indices

Table 7. Sugar Price and Profitability during 2003-2011

Indicator	2003	2004	2005	2006	2007	2008	2009	2010	2011	2003-11
Average import price of the kilogram, in USD	0.25	0.25	0.25	0.29	0.28	0.31	0.33	0.32	0.59	0,32
Kilogram price in Armenia, in USD	0.45	0.48	0.54	0.77	0.75	0.80	0.83	0.93	1.16	0,75
Profitability as a percentage of import price, in %	185	196	218	269	262	263	256	294	198	238

Source: Republic of Armenia National Statistical Service, UN Comtrade statistics

During 2003–2011, about 766 tons of sugar were imported to Armenia at an import price of more than US \$243 million. The average profitability of 238 percent for this period means that the economic entities doing business in this sector have received revenues of about US \$580 million. To compare, total exports from Armenia were about US \$710 in 2009. According to surveys by the Commission, the share of the Lusastgh Sugar Company in the granulated sugar market was 99 percent in 2011. In the same year, the value of sugar imports to Armenia was US \$53.8 million (91.668 tons), amounting to about US \$106.5 million at the sales prices of the same year. In 2011 and the first half of 2012, the Lusastgh Sugar company paid a total of US \$7.3 million in taxes.<sup>73</sup> It equaled 6.8 percent of the company's revenues from granulated sugar during one year. *The amount of direct taxes paid in the same period (including corporate profit tax and personal income tax) amounted to about US \$485,000 or 0.45 percent of the revenue.* If one were to assume that the cost of granulated sugar sold by the importing company is made up of the cost of imported sugar plus 25 percent in additional costs, *the company would have had to pay a total of about US 7.8 million in corporate profit tax alone*  $((106.5 - (53.8 + 53.8 * 25\%)) * 20\%)$ .

To conclude, the “public harm” inflicted by the granulated sugar monopoly has the following elements:

- a) Virtually all of the typical import monopoly features are present; and
- b) There are quality problems (abuse).<sup>74</sup>

**Gasoline and Diesel Fuel market:** In many countries, the fuel market has traditionally been considered a monopolistic market. However, given the size of the Armenian economy, the peculiar transportation situation, and ensuing considerable share of fuel costs in total cost, the Armenian economy might be more sensitive to the lack of competition in the gasoline and diesel fuel market. The key indicators of the market for the period from 2001 to 2011 are presented below. As the table shows, in the early years of the period in question, the market was relatively less concentrated; in some years, two to three dozen economic entities operated in the market. Starting from 2005, the market has had very high concentration, and the number of entities fell to five in the gasoline and seven in the diesel fuel market.<sup>75</sup> During 2004–11, the structure of the key markets (countries) supplying gasoline to Armenia somewhat changed: whereas in 2004 and 2005, the main countries supplying gasoline to Armenia were Great Britain and Panama, Romania and Bulgaria became the obvious leaders starting from 2007. As strange as it may be, Russia and Iran, both oil producing countries, were the third and fifth,

<sup>73</sup> List of the Top 1,000 Large Taxpayers and Taxes and Duties Paid by Them during January–December 2011 and List of the Top 1,000 Large Taxpayers and Taxes and Duties Paid by Them during January–June 2012.

<sup>74</sup> According to the mass media and consumer protection specialists, the humidity of the sold sugar exceeds the permitted standard during some seasons, which substantially affects the product weight:

<http://hetq.am/arm/news/6370/shaqaravazi-shukayum-iroq-khndir-ka.html> <http://haynews.am/hy/1350730490>

<sup>75</sup> Analytical figures and comparisons mostly concern gasoline, because the international statistics and the fuel types mentioned on the website of the Organization of the Petroleum Exporting Countries are hard to compare with the “diesel fuel” considered by the Armenian statistics and competition authorities and other sources of data. Moreover, there have been problems obtaining credible information on the sale prices and volumes of certain types of fuel prior to 2004.

respectively, in the list of countries supplying gasoline to Armenia during the period in question. During the period from 2005 to 2011, average profitability of the gasoline market was 145%;<sup>76</sup> comparing the sales price to the average price in the international market, profitability is more than 180%, because the import price is 25% higher than the international price (presumably, it includes transportation, insurance, and other costs).

To conclude, the “public harm” inflicted by the gasoline and diesel fuel monopoly market has the following elements:

- a) It increases the cost of operating the transport infrastructure in the Republic of Armenia, which is high to begin with;
- b) Due to its constant share in public procurements, it directly influences state budget expenditures at the expense of taxpayers;
- c) The retail fueling stations which are not fuel importers are being consistently ousted from the market, replaced with the importer-sellers; and
- d) The retail network mainly deals with dubious quality of fuel, often having to underfill, too.<sup>77</sup>

Table 8. International and Armenian Prices of Gasoline Compared

Gasoline Prices in Large Markets, \$/b	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2005-2011 average
USA, Gulf	31.02	30.44	36.83	49.37	67.25	77.61	86.42	104.92	69.98	89,54	117,7	87,63
Singapore	27.47	28	34.74	47.19	62.1	73.13	82.87	102.56	69.92	90,05	122,04	86,10
Rotterdam	29.29	28.47	34.86	47.1	62.58	72.9	92.03	108.27	70.45	92,35	120,35	88,42
Average	29.26	28.97	35.48	47.89	63.98	74.55	87.11	105.25	70.12	90,65	120,03	87,38
Average international price of 1 liter, in USD					0.40	0.47	0.55	0.66	0.44	0,57	0,75	0,55
Price of 1 liter in Armenia, in USD					0.73	0.83	0.99	1.13	0.97	0,99	1,21	0,98
Profitability, in %					182	178	181	171	221	174	160	181

Source: www.opec.org, OPEC, Annual Statistical Bulletin, 2012, Table 5.4, www.armstat.am

76 The share of the sales price (average price of the respective year in Yerevan) in the average import price of the respective year. When comparing international and Armenian prices, it is important to bear in mind that the fuel quality in Armenia is typically not the same as that in other countries.

77 In some private conversations, gas station employees have said that underfilling by 5 to 15 percent is a widespread common practice.

Table 9. Concentration in the Fuel Market, 2001-2011

Year	Concentration	Number of Economic Entities	Number of Economic Entities Having a Dominant Position	Retail Price of 1 liter in Armenia, in AMD	Increase/Decrease in Prices in Armenia Relative to the Previous Year, in %	Increase/Decrease in Global Prices Relative to the Previous Year, in %	AMD to USD	Retail Price of 1 liter in Armenia, in USD
2011	Gasoline			450.0	121.4	132.4	372.5	1.21
	Diesel fuel			443.0	126.1			
2010	Gasoline: high		Flash LLC: 42.6	370.8	105.0	129.3	373.6	0.99
	Diesel fuel: high		Flash LLC: 47.3	351.4	115.5			
2009	Gasoline: high	5	City Petrol Group Company: 41.76	353.3	101.9	66.6	363.3	0.97
	Diesel fuel: high	7	Flash LLC: 47.3	304.1	85.3			
2008	Gasoline	7	Flash LLC: 44.1	346.6	102.1	120.8	306	1.13
	Diesel high	11	Flash LLC: 38.8	356.4	116.8			
2007	Gasoline: high	7	Flash LLC: 44.1	339.3	98.0	116.8	342.1	0.99
	Diesel fuel: high	11	Flash LLC: 38.8	305.3				
2006	Gasoline	7	Flash LLC	346.2	103.6	116.5	416	0.83
	Diesel fuel	11	Flash LLC					
2005	Gasoline	7	Flash LLC: 44,1	334.3		133.6	457.7	0.73
	Diesel fuel	11	Flash LLC: 38,8					
2004	Gasoline: high	11	Exim Petrol Group LLC: 30.4			135.0	533.4	-
	Diesel fuel: high	18	Flash LLC: 39.5					
2003	Gasoline: between high and medium	10	Flash LLC: 25.2%, Exim Petrol Group LLC: 25.5%			122.5	578.8	-
	Diesel fuel: medium	18	Exim Petrol Group LLC: 35.0%					
2002	Gasoline: medium	10	Flash LLC: 21%, Exim Petrol Group LLC: 21.5%			99.0		
	Diesel fuel: medium	21	Exim Petrol Group LLC: 47.1%, Flash LLC: 12.6%					
2001	Gasoline	12	Flash LLC: 22.5%, Mika Armenia Trading LLC: 19.8%, Importer—Mika LTC: 78.2%					
	Diesel fuel	35	Exim Petrol Group LLC: 38.1%					

Source: Republic of Armenia National Statistical Service, [www.opec.org](http://www.opec.org)

## 5. Conclusion: A New Model for the Regulation of Monopolies

### 5.1 The Problems of Regulating Monopolies

#### 5.2 The Model Proposed for Regulating Monopolies: The 1+3 Concept

### 5.1 The Problems of Regulating Monopolies

In 2009 and 2010, the Global Competitiveness Report stated that *the ineffectiveness of anti-monopoly policies* tops the list of the ten most serious shortcomings of competitiveness in Armenia, resulting in the existence of dominant groups in the market and a low level of economic competition. Armenia is among the worst performing among 130 countries in terms of all three indicators of the competitive environment. Armenia is the second last in terms of the effectiveness of competition policies. It shows that, despite declarations at levels about the importance of free competition to the sustainable development of the country, the situation in Armenian markets has actually not changed substantially.<sup>78</sup> During her visit to Yerevan at yearend 2009, World Bank Managing Director Ngozi Okonjo-Iweala warned that *Armenia will not reach a higher level of development unless its leadership changes the “oligopolistic” structure of the national economy.*<sup>79</sup> She then added that Armenia is a lower middle-income country. If it wants to become a high-income or upper middle-income country, it cannot do so with this kind of economic structure.

In 2011, substantial amendments were made to the legislation regulating the protection of economic competition. Under the amendments, the State Commission for the Protection of Economic Competition may impose larger fines on unfair competitors than in the past. Nonetheless, the Commission is not unhindered in its work. For instance, when statements were made about price increases of a number of consumer goods being due to unfair competition, the Commission failed to disclose its survey of economic entities abusing their market position. Most of the disputes concerning unfair competition are resolved at much higher levels.<sup>80</sup>

According to reports of the Human Rights Defender of Armenia about the protection of economic competition in Armenia, despite some improvement in the anti-monopoly policy effectiveness indicator in 2011, Armenia is still a poor performer in terms of the level of domestic competition and effectiveness of anti-monopoly policies.<sup>81</sup> In 2011 alone, 12 of the 13 commodity markets surveyed by the Commission were found to have high concentration. Besides, there were reports of cases of obstructing the market entry of new economic entities by those having a dominant position in such markets. Although the number of Commission decisions to

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78 Armenia 2010: A Year of Uncertainty, p. 63, Civilitas Foundation, Yerevan.

79 Armenia Warned to End ‘Oligopoly’, <http://www.armenialiberty.org/content/article/1855547.html>

80 Armenia 2011: No Illusions, p. 62, Civilitas Foundation, Yerevan.

81 Karen Andreasyan, Level of Economic Competition Still Insufficient in Armenia, 29 March 2012, <http://www.armtown.com/news/am/pan/20120329/100871/>

sanction economic entities almost doubled and the resulting amount of fines paid to the state budget increased about six-fold during 2011, measures implemented by the Commission in the relevant cases did not reflect the real picture of violations of the competition legislation in various commodity markets and did not sufficiently influence the situation in terms of the protection of economic competition in Armenia.

Everyone has become weary of much talk of the problems of competition in Armenia. The reason is the extermination or threat of extermination of competition in all dimensions in Armenia, including the economy and politics, competition within and between parties, culture, career advancement, and so on. Competition has been simply eradicated in the field of imports of goods. Only the circle that has in a symbiosis with the government machinery is practically granted the right to import goods with a more or less significant volume of consumption, and imports have simply turned into monopolies. There is a widespread mechanism of imposing arbitrary pricing and business decisions upon consumers. Ordinary citizens are practically deprived of the right to import to their country. Therefore, large capital (with some exceptions) have developed a practice of setting artificially high prices on goods and services as a way of offsetting extra costs born because of their inability to manage monopolistic businesses. Benefiting from the complacency and powerlessness of the government machinery that is dependent upon such monopolies, totally uncompetitive businesses that have exceptionally irrational costs offset them through illogical prices. In other words, they become highly profitable only because of the cruel abuse of the general public that have to purchase their goods and services. This fact helps to understand why, in the last 20 years, large businesses in Armenia have generally maintained a strategic focus on increasing prices, acquiring cheap state-owned assets, and piling up accounts payable to small business, rather than developing management expertise and implementing new technologies and product innovation. During 2002–2008, high-tech goods accounted for 5 to 8 percent of the total value of imports to Armenia. If one were to exclude traditional commodity groups such as computers and telecommunications equipment, the share of high-tech imports would actually be closer to 0.15 percent.

Presently, air fares and prices of fuel, grains, flour, and sugar, and recently also meat and even fruit are obviously artificially high. Considering that more than half of the country's population are poor, representatives of the government machine, which failed to protect people from the impact of the economic crisis, have to make a choice between dignity and other interests. After the international wheat price fell by 23 percent during February–March 2011, the domestic retail price of wheat in Armenia fell by only 4 percent with a time lag of over 1.5 months. This imitation of price reduction had to be either steered by the government machinery or a consequence of its absolute indifference to the people. Another example was the 2011 New Year's Eve, when a deficit of eggs was artificially created, followed by a hike in egg prices. Prior to it, though, government officials in charge arrogantly declared that they would not allow such price hikes. It indicates, however, that local businesses are so greedy and short-

sighted that they might even cut the branch on which they are sitting. All of this, too, is directly linked with the inadequacy of the government machinery and poor governance. Thus, our business community is generally the unproductive and wasting, rather than creative or innovative type of capital. With the current quality of their capital and “businessmanship,” we clearly stand no chance of conquering markets or heights.<sup>82</sup> There is an obvious link between international competitiveness, on the one hand, and the creation of a domestic competitive environment and promotion of domestic economic cooperation, on the other.

The structure of Armenia’s economy, social polarization in the country, the share of external debt,<sup>83</sup> the huge gap between imports and exports, the large shadow economy,<sup>84</sup> and the emigration trends<sup>85</sup> further justify the need for sharp changes in the business environment and the field of economic competition.

The economic competition protection model of the Republic of Armenia, which was analyzed in the previous sections, is essentially a synthesis of the German model. However, functioning in the Armenian reality, heavily bearing the negative stamp of the absence of economic policies and the rule of law on the background of a large shadow economy and ineffective governance, it has become as effective as it could. To achieve more tangible improvements in the structure of the economy and the business environment, Armenia now needs to develop a MODEL OF ATNI-MONOPOLISTIC REGULATION based on a complete review and redesign of economic policies. The international experience has proven the effectiveness of policies of pursuing issues, being responsive, and enforcing sanctions. Considering that the businesses are often more cunning and faster in Armenia than the relevant government agencies, the focus of the competition authority should be on prevention, rather than detection and punishment, similar to many other sectors of the economy.

The need to renew the anti-monopolistic regulation is justified, among others, by the following key problems and consequences.

1. Armenia does not have a comprehensive and targeted document on economic policies. It is perhaps the most significant gap and the root cause of the problems. Under the Law, the Commission participates in the drafting and submission of legal acts regulating the development of economic and related government policies. Besides, on the basis of Article 27.1 of the Republic of Armenia Law on Legal Acts, the Government adopted a decree designating the Ministry of Economy as the government agency conducting the regulatory impact as-

82 Merujan V. Mikayelyan, *Armenia Facing the Modernization Challenge: Reform Issues for the Government Machinery and the Economy*, VEM, July–September 2011, number 3, p. 156.

83 It is estimated close to 50 percent of the GDP.

84 Even the United Nations Conference on Trade and Development estimated the shadow economy close to 40–50 percent in the paper on competition policies in Armenia (Voluntary Peer Review of Competition Policy: Armenia, United Nations Conference on Trade and Development, 01/09/10, p. 48).

85 During 2008–2011, about 138,000 people emigrated from Armenia, of which 23,100 in 2008, 25,000 in 2009, 46,700 in 2010, and 43,800 in 2011. State Migration Service under the Ministry of Territorial Administration of the Republic of Armenia, [http://smsmta.am/?menu\\_id=18](http://smsmta.am/?menu_id=18)



assessment on competition of draft legal acts.<sup>86</sup> Nonetheless, Armenia still has no ideologically-sound economic policy with genuine substance, which could be undertaken by the relevant agencies of the government for implementation. Instead, there are plenty of government officials considering themselves patriotic economists, whilst proposing cliché-liberal “economic” theories, whose falsely neoliberal views, which were long abandoned or never acknowledged by genuinely liberal and developing nations, are nothing but a shell to conceal the fact that they are pursuing their own personal economic interests or furthering such interests of specific circles. What about such core attributes of our statehood as the economic element of national sovereignty and the realization of its benefits for the state’s citizens? On this backdrop, there is a danger that, over time, the competition regulatory authority will turn into a political tool or at best another inspection authority with narrow inner-agency interests and ambitions, never doing any good for either the public or the business environment.

2. In Armenia, the economic concentration process was never regulated through economic policy tools, including anti-monopolistic tools, allowing the formation of a clan-based system, which in turn has been deepening the social polarization. The extent of wealth concentration in Armenia is 28.8-fold greater than in the USA, 14-fold greater than in Russia, and about twice greater than in the Ukraine.<sup>87</sup> It is obvious that Armenia is no better off today than in 2000, when the anti-monopolistic legislation was just being introduced in terms of market concentration, competition, and the ensuing damage to society.
3. The monopolies that have formed in Armenia have never specifically engaged in research and development, innovation, or high technology imports. Moreover, their existence and anti-competitive practices have in all possible ways hampered not only the realization of the nation’s research, technology, and innovation potential, but also improvements of labor productivity.<sup>88</sup>
4. The shadow economy is not a purely Armenian phenomenon. However, the economic, monetary, fiscal, and competition policies implemented in Armenia have always contributed explicitly or implicitly to informality and the flourishing of monopolies. Crushing domestic production and remaining absolutely indifferent to the importance of exports and the intellectual and social capacity of small business, these policies have exacerbated the negative practices found in the economy for years, strengthening the foundation for the current structure and composition of the economy. As a consequence, the government agencies responsible for revenue collection do not have a clear idea of the scale of the shadow economy, and the anti-monopoly authority cannot estimate the actual volume of the markets surveyed. However, the government so far seems content with the present situation, as it solves a key problem of the

<sup>86</sup> Importantly, the statutory provision requiring regulatory impact assessment of legal acts entered into force on 1 July 2009, while the Government adopted an enforcing decree in 2009 prescribing its entry into force from 1 January 2011.

<sup>87</sup> Ashot Markosyan, *Problems of Economic Diversification in the Republic of Armenia*, materials of the “Social Approaches to Armenia’s Challenges: Global Outlook, Local Realities” Conference, Yerevan, 2010, p. 156.

<sup>88</sup> Atom Margaryan, *National Innovation System in the Context of Development Challenges*, VEM, July–September 2009, number 2, p. 99.

government machinery—the fiscal revenue collection problem, whilst managing not to enter into a conflict with the other functions of government “policy” makers.<sup>89</sup> The shadow economy distorts the real picture in the economy and specific markets and creates a permanent risk of rendering erroneous decisions. Opinions are formed on the basis of official statistics and tax reports, and it often seems like entities doing business “in the shadow” benefit because of obvious competitive advantage and being outside the control of the State Commission.

5. Any monopoly that ever existed in Armenia practically remains viable today (including the government official-entrepreneurs, which have competitive advantages over non-official entrepreneurs and are well-placed to make anti-competitive decisions). In parallel, new monopolistic markets are emerging on the basis of administrative resources (for instance, the traffic enforcement cameras installed throughout Yerevan, the awkward “privatization” of the *Jermuk* trademark, and the concentration of the retail market of foreign currency exchange bureaus) or the “absorption” of economic entities (for instance, when Tell-Cell, a payment-and-settlement operator, acquired its competitor, Mega Pantera, service tariffs somewhat increased).

## 5.2 The Model Proposed for Regulating Monopolies: The 1+3 Concept

*The new model proposed for regulating monopolies is conditionally called “The 1+3 Concept,” meaning one holistic competition framework and three types of monopolies (state monopolies, natural monopolies, and exceptional monopolies). It is built around the following principles.*

**Implementation of anti-monopolistic policies in the context of a clearly-articulated economic policy:** An effective competition policy is not feasible without economic policy goals and priorities defined and adopted at a high level in advance.

**Differentiation of policies vis-à-vis monopolies:** The policies against monopolies can be effective in theory and practice if the law prescribes the following classification (or any other similar classification) of economic entities subject to anti-monopolistic regulation:<sup>90</sup>

- Entities operating in the field of free economic competition; and
- Entities that have legitimate monopolies, including:

1. *State monopolies:* a system of social relations where only the state has the exclusive right to carry out certain types of activities through government agencies or economic entities created by them.
2. *Natural monopolies:* social relations permitted by the state in a situation in which demand in a commodity market can more efficiently be met in the absence of competition in view of

<sup>89</sup> The observed practice is that, often, when the budget revenue collection target is not met through the efforts of the administration, the gap (shortfall) for meeting the target for the respective period is “paid in” (filled in) from the “cash box” of one of the oligarchs.

<sup>90</sup> Vahan Hovhannesian, Artsvik Minasyan, Artyush Shahbazyan, Ara Nranyan, and Armen Rustamyan, Members of the National Assembly of the Republic of Armenia, Draft Law on Anti-Monopoly Regulation proposed as a legislative initiative in 2010.

the technological peculiarities of production. In a natural monopoly, the relevant goods or services consumed cannot be replaced with other goods and services, and demand in the commodity market is less dependent upon price than demand in other markets where there is no natural monopoly.

3. *Exceptional monopolies*: a system of social relations in a market for goods or services, which is permitted by the state for a certain time period during which there is no or limited competition.

**Shifting the policy and administration focus from punitive to preventive functions:**

The monopoly regulation model and legislation should, first and foremost, minimize the possibilities for engaging in anti-competitive practices. Moreover, the existing theory and practice concerning the effectiveness of sanctions indicate that fines and penalties for violating the competition laws and government-established “rules of the game” are not enough. Economic entities need to see that all violations are detected and sanctioned; they must be confident that the likelihood of detecting violations of the competition laws is high, and that fines will by far outweigh the potential benefits of unlawful practices. Furthermore, to the extent possible, government agencies should refrain from the frequently populist enforcement of fines that do no harm to the economic entity and are soon followed by the reemergence at the sales outlets of the products for which sanctions were applied, still bearing the same labels, the same specifications or lack thereof, the same periods of use, the same misleading packaging, and so on.

**Organizing the activities of the regulatory authority on the basis of the medium- and long-term programs, with a reporting system containing a set of predefined measurable indicators:** Laws should prescribe provisions on the elaboration of medium- and long-term competition policy programs of the competition authority, as well as the reports to be filed by such authority on the implementation of such programs.

**Monopoly regulation on the basis of comprehensive and genuine principles, subordinating agency interests to the predefined policy objectives:** All competent authorities are expected to coordinate efforts and engage in regular consultations and cooperation.

**Inclusive decision making by the regulatory authority with the participation of civil society and others:** The regulatory authority should enjoy utmost independence from the executive government and the President. Its activities should be as transparent as possible for civil society.

Based on these principles, the monopoly regulation efforts should focus on the following targets.

### **1. Policy Action**

- 1.1. The agency developing policies for the protection of economic competition (i.e. the Ministry of Economy) needs to publish its assessment of the current situation. The competition authority (the State Commission) should present specific figures and measurable indicators

of the public harm inflicted by economic entities through anti-competitive practices in specific commodity markets. This is extremely important for the government to mobilize the support of the whole public to the implementation of competition protection policies and specific administrative measures, without which major success cannot be achieved. Otherwise, the sustainability and outcomes of the State Commission strengthening efforts that began with staffing changes in 2009 and were reinvigorated through legislative amendments in 2011 will be jeopardized, once again disappointing the business and investor community and the public at large.

1.2. Merger of the State Commission for the Protection of Economic Competition and the Public Services Regulatory Commission. Although these commissions were created as independent regulatory bodies at different times with somewhat different objectives, both of them currently regulate nothing but monopolies: the State Commission for the Protection of Economic Competition regulates all monopolies, and the Public Services Regulatory Commission regulates a limited number of monopolies. These agencies have some redundant functions and share many shortcomings and limitations such as the following:

- Lack of a policy-making and/or policy implementation function;
- No specific policies to guide the activities;
- Essentially no system of accountability to the public;
- No legal provisions to prevent potential abuse;
- No provisions on quality control of organizations having monopolistic positions; and
- The regulation mechanisms not promoting the development of competitive markets or safeguarding the quality of services delivered by the natural monopolies.

There are significant differences in terms of resource availability and budget financing, especially concerning staffing and salaries (in both cases, the State Commission for the Protection of Economic Competition is worse off than the Public Services Regulatory Commission). However, for quite some time already, the State Commission for the Protection of Economic Competition is doing a lot more publicly-visible work than the Public Services Regulatory Commission. The unification of these commissions in one regulatory entity would provide new opportunities for improved performance, savings in operating costs and overheads, improvement of the business environment for regulated companies, and mitigation of the compliance burden.

1.3. Elimination of closed markets (save for the markets of state, natural, and privileged monopolies), eradication of unlawful quota mechanisms, preventing the emergence of “businessman officials,” and liberating access to markets.

1.4. A differentiated approach to monopolies and lawful monopolies (for instance, export companies, local producers taking part in public procurements, a certain segment of investors, and the like) through a specific strategy and administration under the adopted policy. In the same context, it is important to differentiate the approaches to large companies that have unintended monopolistic positions in Armenia, such as the Nairit Factory CJSC, the Vanad-

zor Chemical Industry Plant, and the Armenian Aero Navigation CJSC, which have or can have strategic significance for not only Armenia, but also the whole region.

- 1.5. Various measures to promote and encourage competition. The best example would be achieving a breakthrough in sectors that are “run” by large monopolies, protégés, and pre-selected entities that are obvious to the public: such sectors could include the gasoline, diesel fuel, gas, sugar, and other similar commodity markets.
- 1.6. Effective government policy implementation tools facilitating the prevention of price increases by monopolies and depreciation, as well as promoting SME development and encouraging the formation of capital and securities markets.
- 1.7. The Government should implement state regulation of industrial product prices, which is commonly accepted in the monopoly regulation theory.
- 1.8. Where natural monopolies operate, transferring the functions of the lower units to competitively-selected operators, which can facilitate the implementation of cost and loss reduction measures in the relevant sectors.

## ***2. Measures to Improve the Functional Effectiveness of the Regulatory Authority***

- 2.1. Redefining the functions of the regulatory authority and capacity building. The Commission has and will continue to have a key role in solving problems faced by the state. To this end, the regulatory authority should also focus on overcoming the international challenges in the economic sector, as a structure involved in the solution of high-level national issues. It is important not to allow the interests and goals of certain entities to undermine the regulatory authority’s performance of its key functions in the domestic market.
- 2.2. Improving the expert review of draft legal acts, economic practices, and the conduct of the market participants, identifying concealed non-standard anti-competitive practices, and developing constructive approaches.
- 2.3. Significantly increasing the salaries of the staff of the State Commission for the Protection of Economic Competition. The staff of the State Commission for the Protection of Economic Competition have an essential role and an enormous responsibility. There can be no logical explanation for the roughly 50 percent difference in wages between the staff of the State Commission for the Protection of Economic Competition and the staff of the Public Services Regulatory Commission.
- 2.4. Organizing the performance of the regulatory authority on the basis of a program-report-program cycle. The general approach should be based on every annual report being clearly tied to the respective annual program, including provisions on the goals set in the annual program and the planned improvements in the competitive situation, as well as clearly measurable and compatible indicators. To this end, it is necessary to introduce a system of set of performance indicators of the Commission so that its effectiveness can be assessed (a) in terms of the attainment of goals set forth in the law, (b) relative to earlier periods, and (c) in comparison to the

region and other comparable countries. While the reviews and publications of certain international rating agencies may contain estimates based on imperfect and generic methodologies that often do not take into account country specificities and result in unrealistic or incompatible figures,<sup>91</sup> one actually needs a clear and measurable toolkit that will factor in the baseline situation and the set goals. The Commission's report should be turned into a highly effective and illustrative document that should contain analyses of the domestic and international economic trends concerning competition. When presenting its report to the National Assembly, the Commission should identify the issues that need to be addressed by other agencies. The report must address the efforts made for the implementation of economic policies and real efforts to cooperate with other agencies. The report should also contain statistics on criminal case files prepared and sanctions enforced for violations of the competition legislation.<sup>92</sup>

### 3. *Economic Measures*

- 3.1. Throughout its ongoing activities and surveys, the Commission should present assessments of labor productivity in commodity markets, costing, investment projects, and the justification of tariffs. As to the natural monopolies, the regulatory authority should regularly review the execution of and compliance with concession contracts and other fundamental contracts concluded by the government with the relevant companies.
- 3.2. The Commission should be aware of the shadow economy estimates and GDP calculation indicators and methodology used by the official statistical and other concerned agencies. The Commission should have its approaches and methodologies for surveys of economic sectors and commodity markets. The Commission should exercise particular caution in matters that may harm the business reputation of domestic produces, including financial sanctions, because every sanction or biased measure affecting the business entity will eventually indirectly shift the burden on to the consumers.
- 3.3. The regulatory authority should retain a constant focus on the public procurement system, food security issues, and the interests of local producers and exporters.
- 3.4. The introduction of a leniency program can be important and effective as an element of the EU legislation on anti-competitive collusion detection policies. A leniency program would offer exemption or mitigation of the sanction to persons engaged in anti-competitive agreements, if they provide information about such agreements. This policy has proven its viability, because the international experience shows that the vast majority of anti-competitive agreements are detected with the help of leniency programs.

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91 Karen Veranyan, *The Republic of Armenia in the International Rating System*, Yerevan, 2010, pp. 13-14.

92 Until recently, virtually no criminal cases were prosecuted under Article 195 of the Criminal Code of the Republic of Armenia ("Anti-Competitive Practices"). The article proscribes the following acts: artificially increasing, lowering, or fixing unlawful monopolistic prices, as well as restricting competition through prior consent or collusion practices, which is aimed at dividing the market by territories, obstructing the market entry of other economic entities, driving other economic entities out of the market, or setting or maintaining discriminatory prices.

- 3.5. The provision of state support to economic entities and monopolies could also have an important impact if their products and services are exclusively for exports to external markets and contribute to the positioning of local monopolistic entities in international markets. It could take the form of export subsidies or other measures coupled with tight controls.
- 3.6. Monopolistic entities and entities having a dominant position have emerged in the Armenian market. Using their positions, they have become hyper-profitable. Corporate social responsibility of businesses is a set of management activities through which profits are redistributed. In this context, it is recommended to adopt legislation prescribing requirements on corporate social responsibility, which is currently still voluntary. In view of the outstanding problem of monopolies in Armenia, such legislation would enable economic entities operating in highly-concentrated markets to redistribute their profits under social programs.

As in any other sector, a breakthrough cannot be attained through standard approaches alone; difficult political decisions and creative, persistent, and unique long-term solutions are required.

*Thus, a new paradigm is recommended, which would define streamlined and more comprehensible rules for safeguarding economic competition, precluding the existence of latent monopolies and policies that actually promote the existence of monopolies under the pretext of promoting economic competition.*

*The paradigm is clear. Like other countries, Armenia, too, may and will have some monopolies in the economy. However, as such, they need to be prescribed in the legislation, with all the ensuing consequences.*

*In all other instances, monopolies may not exist regardless of any justification or pretext.*

*There can be state, natural, or exceptional monopolies. Monopolistic business entities must be subject to special rules enforced and overseen by a single anti-monopoly authority.*

*If a business entity actually has a monopoly that does not fit within this scheme, the requirements of the anti-monopolistic legislation should apply. In this way, the situation that currently exists in the market can be addressed, so that the actual number of monopolies does not continue to grow despite alleged oversight of the protection of economic competition.*

*In other cases, there must be free competition in markets. The existence of monopolies must be declared as unlawful, with all the relevant consequences.*

*The proposal can indeed result in various discussions, debates, or clashes of opinions. However, one thing is clear: the sector needs regulation. International organizations and the respective regulatory authorities of foreign states, too, need to be closely involved in this process.*

*Such a new paradigm may be not only relevant to the Armenian reality, but also appreciated by the general public in foreign states truly concerned about the issues of economic competition, because a deficit of fair competition can be currently observed all around the world.*

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## Appendices

**Appendix A:** TRADE MARKETS, WHICH THE SCPEC HAS FOCUSED ON MOST

**Appendix B:** FORECAST ALLOCATION FROM THE STATE BUDGET FOR THE STATE COMMISSION FOR THE PROTECTION OF ECONOMIC COMPETITION (SCPEC) AND PUBLIC SERVICES REGULATORY COMMISSION (PSRC)

**Appendix C:** KEY SUGAR SUPPLIERS TO THE REPUBLIC OF ARMENIA, IMPORT VALUE AND PROFITABILITY: 2003-2011

**Appendix D:** KEY PETROL SUPPLIERS TO THE REPUBLIC OF ARMENIA, IMPORT VALUE AND PROFITABILITY: 2003-2011

**Appendix E:** STATUS OF COMPETITIVENESS BODIES OF CERTAIN EU COUNTRIES



*Trade Markets, which the SCPEC has Focused on most:*

Total researched trade markets:	2001		2002		2003		2004		2005		2006		2007		2008		2009		2010		2011	
	20	30	30	30	13	20	20	61	40	17	29	62	20	62	20	62	20					
1 "Sugar"																						
2 Plaster																						
3 "Petrol"																						
4 "Diesel Fuel"																						
5 Natural Gas																						
6 "Eggs"																						
7 "Coffee" <sup>1</sup>																						
8 Cement																						
9 Medication																						
10 "Nitrogenous Fertilizers (ammonium salt/peter)"																						
11 "Vegetable Oil" <sup>2</sup>																						
12 "Wheat Flour"																						
13 "Butter"																						
14 "Global System for Mobile Communication (GSM) services"																						
15 "Rice"																						
16 "Extracted Mineral Water"																						
17 "Bottled Spring Water"																						
18 "Clip"																						
19 "Line Clip"																						

The boxes marked with dark colors are those years when the Committee has conducted a study in its relative market, in which it had either monitored or included that market in its analysis and statistics provided.

<sup>1</sup> During the last couple years, this market has been researched by the following three separate sub-markets: "Instant Coffee", "Ground Coffee" and "Roasted Coffee".

<sup>2</sup> During the last couple years, this market has been researched by the following two separate sub-markets: "Sunflower and Corn oil", and "Olive Oil".

*Forecast Allocation from the State Budget for  
the State Commission for the Protection of Economic Competition (SCPEC)  
and Public Services Regulatory Commission (PSRC)*

YEAR	SCPEC	PSRC
	Budget, Million AMD	Budget, Million AMD
2001	120.0	...
2002	74.3	...
2003	80.7	131.0
2004	97.2	172.1
2005	96.0	352.2
2006	159.2	352.2
2007	165.6	370.5
2008	194.8	403.4
2009	208.6	418.0
2010	202.1	418.0
2011	215.3	418.0
2012	216.7	404.8

Source: Annual reports of the Commissions by individual years according to the laws about the RA State Budget

*Key Sugar Suppliers to the Republic of Armenia,  
Import Value and Profitability: 2003-2011*

Country of Export	2003		2004		2005		2006		2007		2008	
	USD in Thou- sands	Tons	USD in Thou- sands	Tons	USD in Thou- sands	Tons	USD in Thou- sands	Tons	USD in Thou- sands	Tons	USD in Thou- sands	Tons
Brazil	216	901					647	2 940	2 255	9 077	20 038	70 689
Great Britain	15 717	64 614	15 145	62 502	10 649	44 292						
Georgia					4 767	19 655	11 857	43 195	19 895	72 856	6 600	22 515
United Arab Emirates	17	40	10	20	7 473	30 662			690	1 500	1 488	2 890
Switzerland	4 479	18 000			216	980						
Austria							1 168	2 714	0		194	322
Belgium	513	1 734	771	2 585	1 408	4 048	581	1 013	248	483	709	1061
Ukraine			2 144	8 857					5	2	0	
Total Import of the Republic of Armenia	21 400	86 963	18 212	74 239	25 538	103 263	16 280	56 771	24 974	87 846	31 197	102 263
Average import value of kilograms in US Dollars	0.25		0.25		0.25		0.29		0.28		0.31	
Price of kilograms in RA in US Dollars	0.45		0.48		0.54		0.77		0.75		0.80	
Profitability of import values in %'s	185		196		218		269		262		263	

Sources: RA NSS, UN comtrade statistics.

**Key Sugar Suppliers to the Republic of Armenia,  
Import Value and Profitability: 2003-2011 (continued)**

Country of Export	2009		2010		2011		2003-11		Shared Weight, %	
	USD in Thou-sands	Tons	USD in Thou-sands	Tons	USD in Thou-sands	Tons	USD in Thou-sands	Tons	Value	Quantity
Brazil	19 171	61 610	23 856	79 061	50 513	87 998	116 696	312 276	48.0	40.8
Great Britain							41 511	171 408	17.1	22.4
Georgia	0		0		0		43 119	158 221	17.7	20.7
United Arab Emirates	1 643	2 750	0	0	1 011	1 075	12 332	38 937	5.1	5.1
Switzerland							4 695	18 980	1.9	2.5
Austria	199	384	3 949	10 775	338	507	5 848	14 702	2.4	1.9
Belgium	0		398	1 012	0		4 628	11 936	1.9	1.6
Ukraine	0	0	0		0		2 149	8 859	0.9	1.2
Total Import of the Republic of Armenia	21 116	64 824	30 813	97 752	53 799	91 668	243 329	765 589	100	100
Average import value of kilograms in US Dollars	0.33		0.32		0.59		0.32			
Price of kilograms in RA in US Dollars	0.83		0.93		1.16		0.75			
Profitability of import values in %\$	256		294		198		238			

Sources: RA NSS, UN comtrade statistics.

*Key Petrol Suppliers to the Republic of Armenia,  
Import Value and Profitability: 2003–2011*

Country of Export	2004		2005		2006		2007		2008	
	USD in Thou- sands	Tons	USD in Thou- sands	Tons	USD in Thou- sands	Tons	USD in Thou- sands	Tons	USD in Thou- sands	Tons
Romania	-	-	-	-	74 539	139 579	60 773	94 153	84 640	93 295
Bulgaria	-	-	-	-	21 129	45 200	62 085	117 500	93 901	110 061
Russian Federation	1 033	3 119	854	1 016	15 717	35 514	38 019	61 838	38 739	42 560
Panama	38 753	122 178	63 178	145 989						
Iran	14 405	66 353	23 533	70 366	18 883	41 397	6 711	12 089	31 850	35 667
Great Britain	46 023	105 708	51 915	97 565	272	186	456	202	700	234
Ukraine	237	329	603	650	31 677	44 957	35 226	45 720	10 932	7 791
Total Import of the Re- public of Armenia	119 091	359 432	155 535	354 615	173 289	335 782	226 415	360 924	369 371	395 318
Average import value of litres in US Dollars <sup>1</sup>	0.33		0.44		0.52		0.63		0.93	
Price of litres in RA in US Dollars	...	...	0.73		0.83		0.99		1.13	
Profitability of import values in %s	...	...	166.44		160.83		157.81		120.94	

Introduction: <sup>1</sup> 1 Litre is equivalent to 1/1000 tons

... - no data

Sources: RA NSS, UN comtrade statistics.

*Key Petrol Suppliers to the Republic of Armenia,  
Import Value and Profitability: 2003-2011 (continued)*

Country of Export	2009		2010		2011		2003-11		Shared Weight, %	
	USD in Thou-sands	Tons	USD in Thou-sands	Tons	USD in Thou-sands	Tons	USD in Thou-sands	Tons	Value	Quantity
Romania	68 305	101 552	74 188	96 208	90 790	84 475	453 235	609 262	23.2	21.1
Bulgaria	67 200	94 174	90 006	103 826	81 995	75 971	416 316	546 732	21.3	18.9
Russian Federation	48 395	72 365	51 476	67 743	86 425	91 198	280 658	375 353	14.3	13.0
Panama							101 931	268 167	5.2	9.3
Iran	5 404	8 638	9 119	14 800	12 157	16 121	122 062	265 431	6.2	9.2
Great Britain	679	930	3 849	4 271	677	201	104 571	209 297	5.3	7.3
Ukraine	7 618	10 814	4 613	6 236	998	409	91 904	116 906	4.7	4.1
Total Import of the Republic of Armenia	238 100	344 698	304 079	377 683	370 931	357 303	1 956 811	2 885 755	100	100
Average import value of litres in US Dollars <sup>1</sup>	0.69		0.81		1.04			0.68		
Price of litres in RA in US Dollars	0.97		0.99		1.21			0.98		
Profitability of import values in %s	140.43		122.96		116.55			144.31		

Introduction: <sup>1</sup>1 Litre is equivalent to 1/1000 tons

... - no data

Sources: RA NSS, UN comtrade statistics.

*Status of Competitiveness Bodies of Certain EU Countries*

COUNTRY	NAME/STATUS	ACCOUNTABLE TO
Czech Republic	The Competition Protection Office is an independent body and no state governing body can interfere in its activities	It reports to the Government
Denmark	Subdivision of the Economic and Business Affairs Ministry	Remains free from political influence
Estonia	Competition Council, its activities are overseen by the Ministry of Economic Affairs and Communication	It reports to the Ministry of Economic Affairs and Communication
Finland	Agency, which operates as a subdivision of the Ministry of Trade and Industry	
Germany	Bundeskartellamt (German Federal Cartel Office) operates within the Federal Ministry of Labor and the Economy	It is an independent federal body, which remains free from political influence in its decision-making
Italy	The competitiveness body is not accountable to the government.	It reports to the Parliament.
Latvia	The president and members of the Competitiveness Council is appointed by the government in the presence of the Minister of Economy	It is overseen by the Ministry of Economy
Lithuania	The Competitiveness Council is an independent body, which operates according to the corresponding law	It reports to the Parliament
Poland	Competition and Consumer Protection Body	The president of the body is directly accountable to the Prime Minister
Romania	The president of the Competitiveness Body is appointed by the President by the suggestion of the Government.	It is an independent body, which is obligated to publish its activities and without any obligation to discuss it with other bodies
Slovakia	The president of the Competitiveness Body is appointed by the President by the suggestion of the Government.	
Slovenia	Competition Protection Authority	It is not accountable to any legal executive body. In some cases, however, it presents its opinion to the government and parliament
Sweden	An independent governing body which operates within the Trade, Employment and Communication Ministry	
United Kingdom	Competitiveness Commission	It presents its annual report to parliament

## About the authors

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## About HMF

The Hrayr Maroukhian Foundation was created in 2009 in the Republic of Armenia. It is committed to the development and advancement of public policy issues that espouse the basic values of social democracy through education, training, research, and regional and international cooperation.

The aims of the foundation are to contribute to and actively promote a comprehensive national, regional and international dialogue focusing on current political, economic and social developments and challenges, with a primary concentration on Armenia and the South Caucasus.

The foundation conducts studies and develops policies to assist the citizens of the Republic of Armenia in responding to the ever-changing political and social landscape both regionally and globally. The foundation also serves as a center to study the specific issues faced by newly independent states including democratization, labor rights, the absence of social justice, freedom of speech, foreign and security policies, current political and international events and developments as they pertain to the South Caucasus.



## About FES

The Friedrich-Ebert-Stiftung (FES) is a non-profit German political foundation committed to the values of social democracy. The foundation, headquartered in Berlin and Bonn, was founded in 1925 and is named after Friedrich Ebert, Germany's first democratically elected president.

Today, the FES maintains branch offices in over 90 countries and carries out activities in more than 100 countries.

The Tbilisi-based South Caucasus Cooperation Office coordinates FES' activities in Georgia, Armenia and Azerbaijan. In all three countries, the Friedrich-Ebert-Stiftung aims at fostering democracy, peace and social justice through political dialogue, education and research.

FES' partners include NGOs, academics and experts, journalists, parliaments, ministries and political decision-makers.

