

## ROUND THE ISSUE OF THE PROTECTION OF ECONOMIC COMPETITION

**M.V. Miqaelyan<sup>1</sup>, A.Kh. Markosyan<sup>1,2</sup>, E.N. Matevosyan<sup>1</sup>, Sh.S. Miqaelyan<sup>2</sup>**

<sup>1</sup>*Yervan State University*

<sup>2</sup>*Shushi Technological University*

*The State Commission for the Protection of Economic Competition of the Republic of Armenia publishes its annual program of activities for the next year in the manner prescribed by law, including the evaluation of the competitive environment in the commodity markets, the identified problems and the ways of solving them based on these problems, the activities, mechanisms and recommendations of the next year. In the past few years of the program, omissions and special mistakes of inaccuracy have been observed. In particular, despite the fact that every year a large number of state support activities are being carried out, the public only becomes aware of the "ice upper layer", but the Commission has never initiated any proceedings on them (the statute of state aid has been enshrined in legislation since 2007). Programs that do not correspond to the legislative requirements and public expectations of the last few years, and the state body operating at the expense of the taxpayers, should radically change its attitude towards the development and market analysis activities, demonstrating professional approach and tolerance towards the case.*

**Key words:** economic competition, goods market, plan of activity, defense of competitiveness, committee

### **Introduction**

With the entry into force of the RA Law on Protection of Economic Competition (December 15, 2000), the launch of the economic competition protection system was one of the most important institutions promoting the development of Armenia's economy. According to Article 27 (1) of the Law, the State Commission for the Protection of Economic Competition (hereinafter referred to as "the Commission") annually publishes the National Assembly annual reports of its annual activities for next year (hereinafter Program)<sup>1</sup>: It is worth mentioning that the 2018 Program is the 18<sup>th</sup> by its turn, and each of them was presented in time without exception.

The purposes of the following Program are:

1. To protect and promote free economic competition in product market
2. To support the necessary environment for tolerant and free competition
3. To support the formation of favorable atmosphere and the protection of consumers' interests
4. To promote the competitive culture<sup>2</sup>.

In the introduction, it is written after the purposes: "The aforementioned goals are consistent with the objectives set by the Law on the Commission, the fundamental principles adopted by the state for the development of market economy, as well as the requirements for the development of competitive culture in modern economic and legal conditions."

<sup>1</sup> The program includes the information

1) about the investigation of present problems and the analysis of the situation of economic competition

2) about the schedule of the activities on the protection of economic competition and their

3) about the mechanisms regulating the economic competition

3.1) the offers on suggestions about the improvement of competitive situation

4) about the information of the rules necessary for the realization of the tasks and issues stated by the Law from the Commission

<sup>2</sup> [http://competition.am/uploads/resources/Annual\\_Program\\_2018.pdf](http://competition.am/uploads/resources/Annual_Program_2018.pdf)

The first three groups of purposes are confirmed in the first article of Law, and the fourth is purposed by the Commission's own initiative<sup>3</sup>. We will see further on that how the Commission will solve the problems leading to that purpose by the Program 2018.

These goals are followed by the task of promoting their achievement, the monopoly in the markets of goods and services, abuse of dominant position, anti-competitive agreements, unfair competition, and control over the concentration of research into the areas of unfavorable competitive environment, all public administration bodies in the field of business administration so mountain-related activities in a fair and equal approach, as well as cooperation with international organizations operating in the field of economic competition. At the same time, the issue of control necessity over the state aid was out of attention of regulatory body<sup>4</sup>. Meanwhile, state support will not only have a positive impact on individual areas and activities, but will also have a negative impact on the competitive environment in case of improper use. In order to assess that impact, the Legislation has also provided a mechanism for the conclusion of the Commission on the basis of a request from a public support or receiver. Although every year, the state-sponsored public action is being undertaken, many of which are known only to the public, but after the amendment has been put into effect, the Commission has never commenced any proceedings.

In the 2018 Commission Program activity a special place was devoted to international cooperation. For this purpose the realization of a number of issues became important<sup>5</sup>.

According to the law, the first section of the project is dedicated to the analysis of the economic competition situation and the investigation of existing problems.

Before proceeding to an analysis of the economic competition situation, the Commission considered it necessary to clarify the terms "monopoly position" and "dominant position" as, according to him, "Companies with monopoly and dominant position in the society often become nullified, resulting in a misleading impression on the number and scope of monopolies in the republic"<sup>6</sup>.

### **Conflict settings**

First of all, we do not think that there is a need to clarify the concepts in the Regulator's Annual Action Plan in the case they are clearly defined in Article 4 of the Law (at least in terms of monopoly and dominating positions).

Secondly, in the first version of the Law, Chapter 3 and Article 6 are called "Dominant Position", under which they have no competition in the market or lack of significant competition and

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<sup>3</sup> The term of "competitive culture" is not included in the concepts confirmed in Law

<sup>4</sup> The importance of State aid is conditioned by also the necessity of balancing with the European Union Legislation. The hypothesis was put into Law in February 22, 2007. /see the RA Law on "The protection of economic competition", making changes and additions in the Law of the Republic of Armenia, 23.03.2007, ՇՕ-107, <http://www.parliament.am/legislation.php?sel=show&ID=2949&lang=arm>): According to Article 16<sup>1</sup>. State aid is considered to be any aid given by the government, state or local authority body, from the part of state or organization with state participation to any state group of managing face or certain group of faces /including financial means, help, loan, lending, property, privileges or other terms/.

<sup>5</sup> The following problems have been set in the program: Exchange of best practice of competition policy implementation, implementation of legislative reforms in line with international experience, including harmonization of legislation in the context of commitments on issues relating to the application of common principles and rules of competition within the framework of Armenia's accession to the Eurasian Economic Union, for the purpose of carrying out studies on competition situation in target markets, staff development of partnerships, strengthening of partnerships and implementation of joint projects, raising awareness on competition policy, involving international experts in case of consultation on competitive issues, organization of thematic trainings and seminars for Commission staff and other target groups (2018 թ. Program of annual activities, SCPEC of the RA26.09.2017, supplement of the decision number 190-A, [http://competition.am/uploads/resources/Annual\\_Program\\_2018.pdf](http://competition.am/uploads/resources/Annual_Program_2018.pdf)):

<sup>6</sup> See the Program, p. 5. By the way, the regulator has touched upon the same issue with the same professional composition in the Commission's 2016 annual activity report ([http://competition.am/uploads/resources/Annual\\_report\\_2016.pdf](http://competition.am/uploads/resources/Annual_report_2016.pdf), p. 4):

have at least one of their shares in the market ("RA Law on Protection of Economic Competition", Article 6)<sup>7</sup>. Further on the Legislative body by the change made in the Law renamed Chapter 3 and Article 6 as "Monopoly or dominating position", distinguishing terms of "monopoly" and "dominating position", reasonably, as we think so, adding the terms of corporate domination, (the additions and changes in the Law in 2007, February 22, see the same item, Article 6). It seems that change will clarify the uncertainties and missing items during the regulation. But from the point of view of the regulation the distinction between the terms "monopoly" and "dominating position" practically doesn't solve any question. Both according to Law and practice the actions of monopolistic and dominating organizations "are set in one field" and their economic and legal consequences are the same. They are apt to do the same abuses, and the same sanctions are foreseen for them. Hence, the society "equals" these two terms right. The same "attitude" must be shown towards them by the Commission as well<sup>8</sup>.

Thirdly, in Armenian reality the "distinction" between the monopoly and dominating position is subtle and conditional. It is enough for the running individual having 100 % of share in the market to let appear another individual having 0.1 % share that he will immediately lose his monopoly<sup>9</sup>. Moreover, the monopolist can create an entity who legally has no relation with him (practically such cases are often met).

### Research results

Even if 100 individuals are working in the market, one of which having 95% of share and the others only 5%, that one can afford himself to do the same actions as if he will do it in case of having 100% share. Consequently, the essence is not having the monopoly, but acting according to it. It is not accidental that in some countries' competition protection legislations the monopoly is not targeted as regulation object, but the monopolist's activity. For example, the name of the second chapter of the RF Competition protection is "Monopoly activity" under which the hypothesis concerning the dominating position and anti competitive agreements are regarded<sup>10</sup>.

After clarifying the above mentioned regulations, the Commission, considering only the report about the increasing number of importers in goods groups in 2016 compared to 2014 and the decrease of rates of Herfindal-Hirshman index, which, to our mind, came to a disputable conclusion about the improving the competitive environment<sup>11</sup>. Particularly, it is not confirmed that whether 48 and 40 entities importing correspondingly sugar or banana acted in market or not, and if they had so much market rule to be able to influence the activities of main "players". And whether the 45 butter importers belong to the same goods market<sup>12</sup>. If we consider that all market importers of sugar, butter and banana had acted, then the Commission had to clarify first whether all they had individually grouped with great firms acting in the market<sup>13</sup>.

<sup>7</sup> <http://www.parliament.am/legislation.php?sel=show&ID=1272&lang=arm>.

<sup>8</sup> Practically in case of abuses by both monopolist or dominant the same decision is held

<sup>9</sup> In Armenia there are goods markets in which the society "knows" to whom goes their 100% share, but legally these markets have no relation with owners (owner).

<sup>10</sup> See Federal Law N 135-ФЗ «About the protection of competition» Russian newspaper on 27.07.2006. See also law of the Republic of Kazakhstan on 25 December 2008, № 112-IV «About the competition» (with changes and additions on the date 05.05.2015). Enterprises Codex of Kazakhstan from 29 October, 2015, №375-V 3PK, articles 160-231

<sup>11</sup> Program, p. 7.

<sup>12</sup> One part of them is probably imported for the purpose of productive activity and not for consumption. It is also possible that they are two, three different market subjects according to their price parameters. Consequently, the sizes of markets and shares of marketing individuals should be different and the dominating subjects in these markets.

<sup>13</sup> Article 4 of the Law.

So, the number of organizations acting in goods markets (not the importers) is a necessary, not sufficient condition for evaluating the competitive situation.

The analysis of the situation of economic competition supposes the evaluation of competitive situation through goods market analysis in them, investigation of income and outcome of markets and other main issues<sup>14</sup>, on the basis of which the list of next year activities, performances and suggestions of the Commission will be decided. Without the above mentioned analysis of goods markets and the methodology of analysis of goods markets which demand other actions it will be impossible and senseless to realize the analysis of the situation of economic competition, to calculate the Herfindal-Hirshman index and investigate present issues<sup>15</sup>.

In this part of the program as a result of analysis and achievement of activity the three indicators concerning the effectiveness of competitive policy and competitive economic environment of the countries in the report of World Competitiveness 2016-2017 of the international organization of “World Economic forum” are presented, according to which compared to 2010 during 2016 noticeable progress has been encircled<sup>16</sup>. The progress encircled by the above mentioned indicators should be concerned very carefully.

First of all, these indicators characterize the movements of the countries. Even if the country's position has risen to a certain extent, it does not necessarily mean that it is due to the activity of the responsible state body in the given sphere. Even in the case of poor regulatory work, it is possible to improve the index if the competent authorities of the competitor countries work even worse.

Second, the positive influence of the regulator's work, consequently, the effectiveness of his activity, should be felt by the consumers and competitive subjects acting in the markets<sup>17</sup>:

Therefore, in this section of the program, a number of directions of the activity of the Commission are shown (investigation of abuses of monopoly or of the dominating position, signing anti competitive agreements, the control over the camping, expression of bad competition and other tasks of analysis of economic competition), which due to their composition and presentation remind a report and mostly repeat the annual report of the Commission of 2016 (hereinafter Report)<sup>18</sup>.

From the professional point of view in this section, to our minds, more offensive is the “analysis” concerning the “Petroleum” goods market and the conclusion. To be honest, we should present directly the report of the Commission presented in the program<sup>19</sup>. First, from 2016 September

<sup>14</sup> The economic competition is expressed only in goods markets (service, labor). Out of markets there is no economic competition, hence, no competitive environment.

<sup>15</sup> Starting with the annual activity program of the Commission of 2014, in its further programs the regulatory body hadn't also done any analysis of goods markets for the purpose of the analysis on economic competition situation.

<sup>16</sup> About a month before the presentation of the program in the National Assembly the World competitiveness report of 2017-2018 of “World economic forum” was published.

<sup>17</sup> For the rate of effectiveness of anti monopolistic policy Armenia had taken the 77<sup>th</sup> place in 2016, replacing its 138<sup>th</sup> horizontal in 2010, for the rate of influence of companies having dominating position in goods markets it had taken the 51<sup>st</sup> place instead of 133<sup>th</sup>, for the rate of inner market strength the 91<sup>st</sup> place instead of the 136<sup>th</sup>.

<sup>18</sup> In the subsequent narrative, we will try to refer to the example of separate product markets. In particular, in the case of disclosure of cases of abuses committed by subjects of dominant position or participants of an anti-competitive agreement and in the subsequent exclusion of such phenomena.

<sup>19</sup> See [http://competition.am/uploads/resources//Annual\\_report\\_2016.pdf](http://competition.am/uploads/resources//Annual_report_2016.pdf).

<sup>20</sup> According to the study, the prices in Armenian market have been decreasing since September 2016, as a result of which the retail prices for petrol have dropped by about 50 drams to 330 drams by January 2017. Then, at the end of January 2017, retail prices for petrol began to rise to 370 drams in March. In view of the aforementioned, the Commission considered the purchase prices of petrol importing companies, residual values of available inventories, international petrol prices and other indications as a result of which price changes were determined by changes in the price of purchasing petrol. Particularly, studies show that in January 2017, the prices for imported petrol decreased by 50 drams as compared with September 2016, as a result of which retail sales fell to that proportion, and in February as compared with January Prices for one liter petrol have risen by about 50 drams, so petrol prices have increased by almost 40 drams (Figure 5). "And the conclusion, "Essentially, there were comparable price changes in international

to 2017 January the prices of purchasing petroleum reduced for 50 drams and this reducing supposes that petroleum was imported with several group amount (according to picture 5 its price became 180 drams from 230 drams). Retail prices reduced from 308 drams to 330 drams in the same period. The differences between retail prices and purchase prices (importing prices and sale prices plus profit) in 2016 September and 2017 January made correspondingly 130 drams and 150 drams. It means that the reducing of retail price and purchase price for 50 drams provided the individual 20 drams profit per liter. And if we take into consideration that when the cost of acquisition will decrease, other components of the product's value will also be reduced (customs tax, customs duty, etc.), then the additional profit will be greater. Consequently, the Commission was obliged to consider the possible role of the superiors<sup>20</sup>. And already in 2017 the increase in the price of one petrol by 50 drams in February and 40 drams in the price of natural gas will cause the difference of 140 drams, which is 10 drams more than 1 liter of petrol by 2016. It was in September. If we compare these prices by 2016, as of January 1 (Chart 5 of the project contains the information corresponding to 280 AMD and 390 AMD), the difference was 110 drams, which also provided profit to businesses. It means that dominant economic entities have had super profits over a one year period, but according to the Commission, "violations of competition legislation have not been disclosed".

The Commission did not have any interest in the fact that only 3 entities operate in the petrol market, the share of one of which (MaxPetrol) is only 6%. In the case of 2007, 7 business entities were operating in the market, and they were excluded from the positions of Civil Petrol Service (40.4%) and Mika Armenia Trading LSC (5.4%). In other words, over the past 10 years, about 60% of businesses have been driven out of the market. Meanwhile, the Commission did not "notice" it.

The Commission's ineffectiveness also testifies to the fact that for the past several years, the same entity has been systematically violating the same offense for a number of years, especially because of its "friendly" attitude, especially in the case of unfair competition<sup>21</sup>.

Thus, the actual state of anti-monopoly policy in Armenia, the influence of dominant companies and the intensity of competition in the domestic market, and the efficiency of the state body regulating the competition field are low. Moreover, the lack of professionalism that is fraught with a number of negative consequences is of great importance in the activity of this body, which, first of all, affects thousands of consumers.

True, the second part of the Program (Economic Competition Protection Measures and their Implementation Schedule) contains prominent events. Particularly, studies aimed at identifying anti-competitive agreements, monopoly or abuse of dominant position, carrying out activities to improve competitive culture, including raising public awareness of the public, as well as with non-governmental organizations and the business community, including mass media and other stakeholders, exercise restraint, of holding public meetings at the Commission raised through discussion and conduct studies on the competitive issues. Let's try to go beyond these events separately.

First of all, on the implementation of studies to identify anti-competitive agreements, monopoly or abuse of dominating position. As we have already described above, the petrol market is similar to the public for "bear service delivery" when the cases of explicit abuse of a dominant firm have not been qualified as competition law violations.

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petrol markets as well as violations of competition legislation were not disclosed as a result of studying the activities of large companies dealing with petrol import and sale in Armenia"

<sup>21</sup>About the methodology of proving abuses. M. Miqaelyan, About the investigation issues of price abuses. The problems of economic development and stabilization /proceedings of 18<sup>th</sup> Scientific session of YSEU professor and lecturer staff and post graduates /, Yerevan, 2003, p. 147-150.

<sup>22</sup>See Miqael Miqaelyan, Unfair competition and the challenges of its regulation in Armenia, Banber, Yerevan State University, Sociology, Economy, N 3 (24), 2017, p. 11-18.

Secondly, as we have already mentioned, one of the goals set in the Program is the promotion of competitive culture, which is not enshrined in the concepts interpreted in the Law, and it is unclear how the committee will "carry out activities aimed at improving the competitive culture". Not to mislead the truth, we should mention that the Commission "opens" in its further annotation that for this purpose, particularly, it should "increase the level of informing the wide ranges of society...". It means that the Commission has to "act" publicly in 2018. And it is the demand of Law (Article 18, Part 2). To act publicly the Commission had assumed before in its programs in the same formation<sup>22</sup>. But in the annual report of the Commission on its activity it is not mentioned how it realized the "duty"<sup>23</sup>. By the way, since 2009 the Commission escapes from the function of acting publicly and doesn't publish the bulletin foreseen by Law (see Article 18, part 2, paragraph 10), and since 2013 it doesn't upload its decisions in the web<sup>24</sup>. The fact, that the Commission does not highlight the act concerning the publicity is proved by not foreseeing the mechanism supporting it in the program.

## Conclusion

One of the ways in which the Commission "raises awareness of the broader public awareness of the issue" is "observing the sessions of the Public Council adjunct to the Commission." The requirement of the mentioned body does not follow the requirements of the Law, and this study indicates that the members of the current Board, which were involved in the Commission's "choice", were not prominent in professionalism and impartiality. And in such a situation, "session of the Public Council adjunct to the Commission" becomes self – purposed and meaningless, which will be a waste of time for the Commission.

As we have already mentioned at the beginning of this study, the Commission has not set a task in the Project to control state aid and it is not accidental that, in this respect, such an event did not provide for the protection of economic competition, and how surprising it is to provide a mechanism for the suspension of state support for competition protection by "dissolving an unlawful act adopted". Thus, the Commission's annual activities for the past few years do not comply with the legislative requirements and expectations of the public, and the state body acting on the account of taxpayers has to drastically change their attitude towards their development and market analysis, demonstrating professional approach and sympathy for the case.

## References

1. Miqaelyan M. Unfair competition and the challenges of its regulation in Armenia, p. 16,

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<sup>23</sup> See, for example, RA ECPSC 2016 annual activity program [http://competition.am/uploads/resources/Activity\\_plan\\_2017.pdf](http://competition.am/uploads/resources/Activity_plan_2017.pdf), p. 23, RA ECPSC 2017 annual activity program, [http://competition.am/uploads/resources/Activity\\_plan\\_2017.pdf](http://competition.am/uploads/resources/Activity_plan_2017.pdf), p. 24:

<sup>24</sup> RA ECPSC 2016 report of annual activity, [http://competition.am/uploads/resources/Annual\\_report\\_2016.pdf](http://competition.am/uploads/resources/Annual_report_2016.pdf):

## ՏՆՏԵՍԱԿԱՆ ՄՐՑԱԿՑՈՒԹՅԱՆ ՊԱՇՏՊԱՆՈՒԹՅԱՆ ՀԱՐՑԻ ՇՈՒՐԶ

Մ.Վ. Միրայեյան<sup>1</sup>, Ա.Խ. Մարկոսյան<sup>1,2</sup>, Է.Ն. Մաթևոսյան<sup>1</sup>, Շ.Ս. Միրայեյան<sup>2</sup>

<sup>1</sup>Երևանի պետական համալսարան

<sup>2</sup>Շուշիի տեխնոլոգիական համալսարան

ՀՀ տնտեսական մրցակցության պաշտպանության պետական հանձնաժողովն օրենսդրությամբ սահմանված կարգով յուրաքանչյուր տարի հրապարակում է հաջորդ տարվա իր գործունեության ծրագիրը: Դրանում ներկայացվում են ապրանքային շուկաներում մրցակցային միջավայրի գնահատականը, բացահայտված հիմնախնդիրներն ու դրանց հիման վրա՝ այդ իմնախնդիրների լուծման ուղիները, հաջորդ տարվա գործունեության միջոցառումները, մեխանիզմները և առաջարկությունները: Հանձնաժողովի գործունեության վերջին մի քանի տարիների ծրագրերում նկատվել են բացթողումներ և մասնագիտական առումով անճշտություններ: Մասնավորապես, չնայած յուրաքանչյուր տարի պետական օժանդակության բազմաթիվ գործողություններ են կատարվում, որոնցից հանրությանը հայտնի են դառնում միայն «սառցաբեկորի վերին շերտը», սակայն Հանձնաժողովը դրանց վերաբերյալ երբևիցե որևէ վարույթ չի սկսել (պետական օժանդակության կարգավորման դրույթն օրենսդրությամբ ամրագրվել է 2007 թվականից):

Մասնագիտական առումով՝ ոչ ճշգրիտ վերլուծության պատճառով բենզինի շուկայի մրցակցային միջավայրի վերաբերյալ ոչ համարժեք գնահատական է տրվել: Վերջին մի քանի տարիների տարեկան գործունեության Ծրագրերը չեն համապատասխանում օրենսդրի նախատեսած պահանջներին և հասարակության սպասումներին և հարկատուներին հաշվին գործող պետական մարմինը պետք է արմատապես փոխի դրանց մշակման և շուկաների վերլուծության աշխատանքների վերաբերյալ վերաբերմունքը՝ ցուցաբերելով պրոֆեսիոնալ մոտեցում և գործի նկատմամբ բարխդություն:

**Բանալի բառեր.** տնտեսական մրցակցություն, ապրանքային շուկա, գործունեության ծրագիր, մրցակցության պաշտպանություն, հանձնաժողով

## К ВОПРОСУ ЗАЩИТЫ ЭКОНОМИЧЕСКОЙ КОНКУРЕНЦИИ

М.В. Микаелян<sup>1</sup>, А.Х. Маркосян<sup>1,2</sup>, Э.Н. Матевосян<sup>1</sup>, Ш.С. Микаелян<sup>2</sup>

<sup>1</sup>Ереванский государственный университет

<sup>2</sup>Шушинский технологический университет

Государственная комиссия РА по защите экономической конкуренции публикует свою ежегодную программу мероприятий на следующий год. В ней представлена оценка конкурентной среды на товарных рынках, выявлены проблемы и способы решения этих проблем, мероприятия, механизмы и рекомендации на следующий год. В программах действий комиссии за последние годы наблюдались проблемы и профессиональные неточности. В частности, несмотря на то, что каждый год проводятся мероприятия государственной поддержки, комиссия никогда не проводила никаких административных разбирательств. Из-за некорректного анализа, отсутствует адекватная оценка конкурентной среды на рынке бензина.

Программа действий комиссии за последние годы соответствует законодательным требованиям и ожиданиям общественности, а государственный орган, действующий за счет налогоплательщика, должен радикально изменить свое отношение к их разработкам и анализу рынков, демонстрируя профессиональный подход к этому делу.

**Ключевые слова:** экономическое соперничество, товарный рынок, программа действий, защита соперничества, комиссия.