

**STATE COMMISSION FOR PROTECTION OF ECONOMIC COMPETITION**  
**IN THE REPUBLIC OF ARMENIA**  
**DECISION# 27**  
**March 4, 2002**

**ON APPROVAL OF “ORDER OF DEFINITION OF DOMINANT POSITION OF**  
**ECONOMIC ENTITY ON PRODUCT MARKET” AND “ORDER OF DEFINITION OF**  
**PRODUCT MARKET BOUNDARIES AND VOLUMES” AND RECOGNIZING ANNUL A**  
**NUMBER OF DECISIONS OF THE STATE COMMISSION FOR PROTECTION OF**  
**ECONOMIC COMPETITION OF THE REPUBLIC OF ARMENIA**

Taking as a basis Sub-Clauses “a” and “f” of Clause 1 of Article 19 of the RA Law on “Protection of Economic Competition”, the State Commission for Protection of Economic Competition of the Republic of Armenia

Decides:

1. Approve the Order on Definition of Product Market Boundaries and Volumes (Attached: Appendix 1).
2. Approve the Order on Definition of Dominant Position of Economic Entity on Product Markets (Attached: Appendix 2).
3. Recognize void Decision #5 of the State Commission for Protection of Economic Competition of the Republic of Armenia on “Methodological Instruction on Definition of Product Markets Boundaries and Volumes” from April 18 2001 and Decision #8 on “Methodological Instructions on Definition of Dominant Position of Economic Entity on Product Market” from April 30 2001.

CHAIR

S. STEPANYAN

**ORDER ON  
DEFINITION OF DOMINANT POSITION OF ECONOMIC ENTITY ON PRODUCT  
MARKET**

**1. GENERAL PROVISIONS**

- 1.1 The present Order is envisaged for the definition of a dominant position of economic entity on a certain product market.
- 1.2 Definition of a dominant position is necessary for:
  - a) Implementation of supervision over agreements and concentrations;
  - b) Discussion of the economic competition protection legislation infringements;
  - c) Disaggregation of economic entities;
  - d) Implementation of other powers stipulated by the Law.
- 1.3 Possession and maintenance of a dominant position is not anticompetitive per se.
- 1.4 The present Order shall be a basis for execution of the Commission decisions regarding dominant positions of economic entities on product markets.

**2. Definition of Dominant Position of Economic Entity**

2.1 Definition of an economic entity share in the total volume of product market

In defining a share of an economic entity in the total volume of product market, the comparability of the analyzed indices shall be ensured:

- Belonging to the same classifier of product group;
- Making of computation for a certain fixed period;
- Identity of product market geographical boundaries for all participant economic entities.

To define a share of an economic entity in the total volume of product market:

- product type shall be selected,
- geographical and product type boundaries of a product market shall be defined;
- information on the sales volume of the concrete product market participant economic entities on domestic market shall be collected and total sales volume of product market shall be defined;
- Share of an economic entity (SEe) in the product market total volume shall be defined based on the analysis of the information received. It shall be defined as the ratio of sales volume of a certain product type of an economic entity on market and total sales volume of the same product type on the given market during a certain period:

$$SEe = SV/MV \times 100\%, \text{ where:}$$

SV- sales volume of a certain product of a certain supplier,

MV- total sales volume of a certain product on market.

*(Clause 2.1 is changed upon Decision #68-N on 13.08.03)*

2.2. Market share of an economic entity shall be defined in price and/or in quantitative expression.

If the product market is homogeneous (similar assortment), the share of economic entity shall be defined in quantity. On non-homogeneous markets, in case of existence of conventional unit (e.g. t-conventional fuel, 1000 conventional boxes etc.), the share of economic entity shall also be defined in quantity.

In non-homogeneous product, in case of absence of conventional unit, the share of economic entity shall be defined in price.

2.3. Recognizing economic entity as having a dominant position on product market

Economic entity shall be recognized as having a dominant position on product market, if as a supplier or consumer it:

a) has no competitors:

Economic entity has no competitor, if it is the only economic entity operating on given product market and captures 100% of the given market with its sales (purchase) volumes;

b) is not exposed to any significant competition:

Economic entity is not exposed to any significant competition if in the sales volumes of market its share (Q) shall be:

- 1) 80% and more, but less than 100% ( $80\% \leq Q < 100\%$ );
  - 2) 33.(3)% and more, but less than 80% ( $33.(3)\% \leq Q < 80\%$ ), and the share of its nearest competitor is less 5 and more times with respect to its own share;
  - 3) 33.(3)% and more, but less than 80% ( $33.(3)\% \leq Q < 80\%$ ), and the share of its nearest competitor does not meet the conditions of Para 2 of Sub-clause “b” of the present Clause and opportunities of other economic entities operating on the same product market are not sufficient to alter the existing stability of market, and current market entry impediments did not allow potential competitors to enter market. Market stability is invariability of number and share of market participant economic entities as well as of market volume or change up to 5% within 1-year period.
- c) captures at least one third of the given market by its sales volumes.

Economic entity shall be regarded as having a dominant position on the basis of results of analysis of indicators for the last three, six, nine or twelve months preceding the study or on the basis of a license, tender or other data proving the dominant position of an economic entity for the entire period of economic activity conducted from the moment of acquisition of dominant position.

***(Clause 2.3 is changed upon Decision# 68-N from 13.08.03 and Decision # 126-N from 01.09.04)***

2.3.1. Relevant Decision of the State Commission for Protection of Economic Competition of the Republic of Armenia shall serve as a basis for recording of dominant position economic entity in the Centralized Register (Log) of Dominant Economic Entities and in case of losing such position for withdrawing entity from the registration.

In case the share of an economic entity registered in the Centralized Register (Log) of Dominant Economic Entities is changed (if that change does not lead to the loss of a dominant position), the relevant change shall be registered in the Register specifying the number and date of Decision serving as a basis for the change.

***(Clause 2.3.1 is changed upon Decision#126-N from 01.09.04)***

**ORDER**  
**ON DEFINITION OF PRODUCT MARKET BOUNDARIES AND VOLUMES**

**1. GENERAL PROVISIONS**

- 1.1 The present Order (hereinafter "Order") is anticipated for defining product market boundaries and volumes to ensure enforcement of the RA Legislation on Protection of Economic Competition.
- 1.2 Product market shall be characterized by product type boundaries, geographical boundaries, composition of sellers and buyers, and product resource volumes.
- 1.3 The present Order shall serve as a basis for Commission to adopt decisions referring product market boundaries and volumes.

**2. PRODUCT TYPE BOUNDARY OF MARKET**

- 2.1. Classification group of the studied product shall be identified in defining market product type boundaries.
- 2.2. Definition of product type boundaries of market shall be based on mutual substitutability of products comprising one product group, which is defined:
  - Based on the Commission researches or
  - As a result of sample survey of buyers.
- 2.3. Mutual substitutability of products shall be based on mutual substitutability according to consumption (demand), i.e. product use, the criteria of which are as follows:
  - a) Functional substitutability of products which shall be defined in comparing the consumption purpose of a given product and its supposed substitute;
  - b) Similarity of consumption features of products and their substitutes which shall be defined in comparing physical, technical, practical, qualitative and price indicators of the given product and its supposed substitutes.

From the consumption aspect, in special cases the cross elasticity of demand shall be applied to define mutual substitutability which is computed by the following formula:

$$U X Y = \frac{\text{Change of \% of X product sales volume (demand)}}{\text{Change of \% of Y product price}}$$

*(Clause 2.3 is changed upon Decision # 126-N from 01.09.04)*

- 2.4. In certain cases, the product mutual substitutability shall be based on the product mutual substitutability according to production (in terms of produce production).

From the production aspect, the product mutual substitutability shall be regarded as follows:

- a) Availability of free production capacities which may be used for production of product belonging to the product group under consideration (they may be standstill, excess capacities which enable to start production of subject matter product within a short period of time and with minimal additional costs);
- b) Technological possibilities to restart production capacities which will ensure shifting from production of a product belonging to the given product group to production of product belonging to other product market (e.g. poultry or cattle feed producing economic entities have capacities which enable them to produce necessary feed for pigs).

Thus, product type boundary of market is the aggregate of a product and mutually substitutability products, within which no change (price or some other) may lead to reorientation of buyers in favor of some other product any longer.

**3. PRODUCT MARKET GEOGRAPHIC BOUNDARIES**

3.1. Product market geographical boundary may be the geographic territory (including road, route, air route and other area) within the frames of which it is economically possible and expedient for buyers to obtain regarded product and this possibility and expediency is lacking outside of the boundaries of the given area.

Market geographical boundaries shall be defined according to equal accessibility of products sold on different areas of market.

*(Clause 3.1. is changed upon Decision # 126-N from 01.09.04)*

3.2. Republican product market shall be regarded the territory of the Republic of Armenia, whereas local product markets – a city, separate settlement, groups of settlements, a marz, groups of marzes and any other territory.

3.3. Market characterizing main indicators shall be as follows:

- a) Possibility of mutual penetration of demand between the territories within the market composition, i.e. accessibility and expediency of transportation means for a buyer to reach to a seller;
- b) Possibility for product transportation between the territories within the market composition, i.e. preservation of product quality and consumption features in the course of transportation, lack of administrative restrictions for the product import-export in a given region.

#### **4. MARKET PLAYERS**

4.1. Product market players shall be product buyers and sellers - product proprietary right (possession, use and management) transmitting the parties.

- a) Product sellers shall be:
  - Economic entities selling their own production,
  - Trade and intermediary organizations, which ensure product transportation from a producer to an end user.
- b) Product buyers shall be:
  - End users of produce;
  - Trade mediators;
  - Economic entities that obtain products for production consumption.

#### **5. PRODUCT MARKET VOLUME**

5.1. Product market volume quantitative feature shall be the indicator of total sales volume of product in price and/or quantity within the market geographic boundaries.

5.2. Total sales volume of product shall be define as a sum of product sales by all sellers of the given market.

$$MV = \sum_{j=1}^n S_j \text{ where}$$

MV – total sales volume of product on given product market,

$S_j$  – sales volume of the  $j^{\text{th}}$  economic entity on the given product market;

n – number of economic entities operating on the given product market.

5.3. In case of absence of product volume data, the market volume shall be defined through computation method according to the following formula:

$MV = R_{by} + PPV + IV - EV - R_{ey}$ , where:

Comv – Product production volume;

IV – import volume ;

EV – export volume ;

$R_{by}$  – Residual at the beginning of the year which has economic entity (at the beginning of the studied period),

$R_{ey}$  – residual at the end of the year which has economic entity (at the end of the studied period).

*(Clause 5.3. is changed upon Decision # 126-N from 01.09.04)*